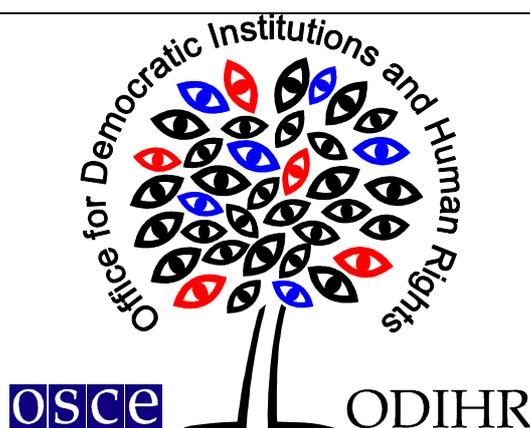


Warsaw, 7 October 2008

Opinion-Nr.: REL-KYR/120/2008

(Adv Council on FoRB)

[www.legislationline.org](http://www.legislationline.org)



## Comments

### On the Draft Law of the Kyrgyz Republic

#### **“ON FREEDOM OF CONSCIENCE AND RELIGIOUS ORGANIZATIONS IN THE KYRGYZ REPUBLIC”**

Prepared by the OSCE/ODIHR Advisory Council  
on Freedom of Religion or Belief in co-operation with European Commission for  
Democracy through Law (the Venice Commission) of the Council of Europe

*Aleje Ujazdowskie 19 PL-00-557 Warsaw ph. +48 22 520 06 00 fax. +48 22 520 0605*

## **I. INTRODUCTORY REMARKS**

1. These Comments are based on the proposed law “On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic” (the “Proposed Draft Law”) that was submitted to the OSCE Center in Bishkek in July 2008 by the Speaker of the Kyrgyz Parliament with a request for comments. A copy of the Russian text that was submitted with the request is attached as Exhibit A, and a translation is attached as Exhibit B. The task of preparing these Comments has been delegated to the Advisory Council of the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief (the “Advisory Council”), a body created by the ODIHR with acknowledged expertise on the relevant issues. The Advisory Council has members from many OSCE participating States, who have extensive experience in advising the ODIHR and participating States with regard to law reform initiatives such as that contemplated by the Proposed Draft Law. The European Commission for Democracy through Law (the Venice Commission) of the Council of Europe co-operated with the Advisory Council in this assessment. Because the Comments are based solely on the Proposed Draft Law, the Advisory Council notes that some of the problems addressed may be dealt with in other parts of the Kyrgyz legal system. The Comments assume that it is better to mention a potential problem, in case it is not adequately solved by other legal provisions. In addition, there are a number of points where the English translation may be imperfect or imprecise, and there may be other points where problems of translation may have made it difficult to comment with sufficient precision. We trust that it will be clear when a mere problem of translation is involved and the difficulty identified does not exist in the original language of the Proposed Draft Law.

2. These Comments have been prepared taking into account Kyrgyzstan’s international commitments, and in particular its commitments as a participating State in the Organization for Security and Cooperation in Europe (OSCE), relevant international standards with respect to religious association laws<sup>1</sup>, relevant provisions

---

<sup>1</sup> The term “religious association law” is used in these comments to cover the body of law dealing with registration, recognition, establishment, creation, operation and dissolution of legal entities for religious organizations. Sometimes the phrase “registration law” is used as a convenient shorthand for this field. Different systems use different techniques to create legal entities or to mark their coming into existence. Some systems allow establishment of legal entities without any state approval or

of Kyrgyzstan's Constitution, and general experience with religious association laws in other countries. After providing an overview of the relevant norms, an article-by-article analysis of the provisions of the Draft Law is provided. In order to keep the body of the Comments as short as possible, general background information about the applicable international standards is described in a summary fashion, with more extended treatment of the relevant norms and case law being provided in attachments.

3. In particular, the "Guidelines for Review of Legislation Pertaining to Religion or Belief" (the "OSCE Guidelines")<sup>2</sup> that have been prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief ("Advisory Panel") in consultation with the European Commission for Democracy through Law (Venice Commission) is attached as Exhibit C. Because Appendix I of the OSCE Guidelines includes the relevant passages on freedom of religion or belief from all the major international instruments, it has not been necessary to quote them in the body of these comments.

4. Reference is also made to the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms ("CISCHR").<sup>3</sup> Following Russia's ratification of the CISCHR, but before other states that were members of both the Council of Europe ("CoE") and the CIS did so, the Parliamentary Assembly of the CoE adopted its Resolution 1249 (2001),<sup>4</sup> which recommended that members of the CoE and applicant states should not ratify the CISCHR because it offers less protection than the ECHR and that the Commission contemplated by the CISCHR for enforcement of its provisions would not be as effective in protecting human rights as

---

involvement, as with the creation of trusts in the common law world and certain South African corporations. See Johan van der Vyver, "Religion," in *The Law of South Africa* (LAWSA), ed. W. A. Joubert and J. A. Faris, 23 (Durban: Butterworths), para. 248 (Joan Church rev.). Some form of state registration or recognition is more typical as a precondition of acquisition of legal entity status in other legal systems.

<sup>2</sup> The Guidelines were adopted by the Venice Commission of the Council of Europe at its 59th Plenary Session (Venice, 18-19 June 2004), and were welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July 2004). The Guidelines have also been commended by the UN. Special Rapporteur on Freedom of Religion or Belief. Report of the Special Rapporteur on the Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN.4/2005/61, para. 57.

<sup>3</sup> This convention (the "CISCHR") was opened for signature on 26 May 1995, and was signed by seven of the twelve CIS Member States on that day. It entered into force on 11 August 1998, at the time it had been ratified by the Russian Federation, Belarus, and Tajikistan. Kyrgyzstan became the fourth state to ratify the Convention on 21 August 2003. No other states have ratified the CISCHR.

<sup>4</sup> The Council of Europe, through its Parliamentary Assembly Resolution 1249 (2001) on "Coexistence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention of Human Rights."

the European Court of Human Rights. The result is that Kyrgyzstan is the only additional state to have ratified the CISCHR since the date of Russia's ratification.<sup>5</sup> This history does not mean that the norms of the CISCHR are not binding; it is just that most CIS members have recognized that the ECHR standards represent an authoritative interpretation of human rights obligations, and that these ECHR standards are in some respects stricter and procedurally effective. In the religion area, the requirements are identical, with one exception that will be noted in paragraphs below.

5. In light of the close parallels between international obligations Kyrgyzstan has assumed and standards that have emerged under the European Convention, two additional overview documents based largely on developments in the European Court of Human Rights have been attached. The first (Exhibit D) summarizes the European Court's case law affirming the right of religious communities to acquire legal entity status. The second (Exhibit E) describes the minimum human rights standards for religious association laws. While the decisions of the European Court of Human Rights are not technically binding on Kyrgyzstan, they reflect the views of the leading forum for interpretation of the relevant human rights instruments for most members of the OSCE, and thus constitute significant persuasive authority on the relevant issues. Stated differently, OSCE commitments have been formulated with these European standards in mind, and in this sense, the interpretation of international human rights norms by the European Court of Human Rights is relevant to an understanding of OSCE commitments. The main requirements of international standards are summarized in the next section.

## **II. EXECUTIVE SUMMARY**

The major findings of the comments are summarized here:

- a) Many provisions of the Draft Law are vague, and fail to give clear notice to organizations and individuals as appear to invite abuse of authority and discrimination by officials;
- b) the state does not appear to be barred from making theological judgments on the beliefs of a group;

---

<sup>5</sup> Belarus and Tajikistan ratified on the same date, 11 August 1998.

- c) a ban on all operation and activity without registration is disproportionate and is clearly an unnecessarily broad limitation of freedom of religion or belief, as states may not make acquisition of legal entity status a condition for individuals or groups engaging in religious activity;
- d) the requirements set forth for registration of religious organizations and associations are not spelled out clearly, leaving considerable confusion;
- e) the Draft Law does not appear to allow religious groups flexibility to organize in accordance with their own doctrines and traditions;
- f) the Draft Law fails to provide for the reasons which may lead to refusal of registration of a religious organizations and associations, for the requirement that the grounds for refusal be spelled out in detail and in writing and for the explicit possibility to appeal against refusal in court;
- g) minimum membership and duration requirements are impermissible for acquiring legal entity status;
- h) the Draft Law appear to impose undue limitations on access to legal entity status;
- i) numerous provisions of the Draft Law inappropriately restrict freedom of expression and rights to disseminate religious and other materials;
- j) the Draft Law fails to protect the rights of freedom of religion or belief of non-citizens residents in the Kyrgyz Republic.

### **III. GENERAL ISSUES**

#### **A. International Standards**

6. The starting point for analyzing international standards with respect to freedom of religion or belief is Article 18 of the International Covenant on Civil and Political Rights (“ICCPR”), which provides as follows:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

7. One of the most fundamental international standards concerns the right to internal freedom of belief—the so-called *forum internum*. According to Article 18(3) (and this is replicated in other limitation clauses in other international instruments), limitations may *only* be imposed on *manifestations* of belief. The internal right to have or adopt a religion may not be regulated by the state.<sup>6</sup>

8. As a practical matter, the key issue in most cases is whether a particular limitation on a manifestation of religion is permissible under international law as provided by the so-called “limitation clauses” of the pertinent international instruments—most notably Article 18(3) of the ICCPR. Note that Article 10(2) of the CISCHR and Article 9(2) of the European Convention on Human Rights (“European Convention” or “ECHR”) contain virtually identical provisions. Article 10 (2) of the CISCHR reads as follows:

10(2). Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of national security, public safety, public order, public health or morals or for the protection of the rights and freedoms of others.<sup>7</sup>

Article 9(2) ECHR is almost identical:

(9)2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

---

<sup>6</sup> Matters relating to the internal forum, such as the internal holding of beliefs, changing beliefs, and so forth lie beyond the regulatory reach of the state. For more detailed discussion of internal forum issues, see Manfred Nowak and Tanja Vospernik, *Permissible Restrictions* Durham and Tahzib-Lie (eds.), *Facilitating Freedom of Religion or Belief: A Deskbook* (Leyden: Martinus Nijhoff Publishers, 2004), at 148-52; Malcolm D. Evans, *Religious Liberty and International Law in Europe* (Cambridge: Cambridge University Press, 1997), pp. 294-98.

<sup>7</sup> Article 10(2) CISCHR.

While the three limitations clauses are very similar, differences between these provisions and Article 18(3) ICCPR are worth noting. Unlike the other two limitation clauses, Article 10(2) CISCHR allows limitations in the interest of national security. In contrast, the other two limitation clauses do not allow national security alone (in the absence of a demonstrable threat to public safety, health or order) to serve as a basis for a limitation. The U.N. Human Rights Committee, the body charged with supervising implementation of the ICCPR, has clearly held in its General Comment interpreting Article 18 that “The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed as restrictions on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as *national security*.”<sup>8</sup> In contrast to Article 18(3), the other limitation clauses emphasize that to be permissible, limitations must be “*necessary in a democratic society*”. Whereas Article 18 was framed so that there would be no question that it applied in all societies, the other two limitation clauses call for an arguably more tightly constrained notion of what is necessary in a democratic society, which insists that the range of permissible limitations on manifestations of religion be even narrower. Finally, Article 18(3) ICCPR makes it clear that only “*fundamental rights and freedoms of others*” can be a permissible ground for limitations. This would appear to be the intended meaning of the other two limitation clauses as well. It would be odd if trivial rights could provide the basis for limiting a right as fundamental and as central to human dignity as the right to freedom of religion or belief.

9. To the extent religious association laws facilitate religious practice, they do not constitute a limitation at all. When they are used as a control mechanism, in contrast, they often do impose limitations. Such restraints are permissible only if they fall within the permissible range of limitations set forth in the international limitations clauses. Specifically, limitations on manifestations of religion are permissible only if three rigorous criteria are met.

---

<sup>8</sup> U.N. Human Rights Committee, General Comment No. 22 (48) (Article 18), adopted by the U.N. Human Rights Committee on 20 July 1993. U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/ Rev.1 at 35 (1994), para. 8 (emphasis added).

10. First, limitations can only be imposed by law, and in particular, by laws that comport with the rule of law ideal.<sup>9</sup> Many of the constraints on religious association laws described above flow from this requirement. Thus, limitations may not be retroactively or arbitrarily imposed on specific individuals or groups; neither may they be imposed by rules that purport to be laws, but are so vague that they do not give fair notice of what is required or they allow arbitrary enforcement.<sup>10</sup> Due process considerations, such as the rights to prompt decisions and to appeals, also reflect this basic rule of law requirements.

11. Second, limitations must further one of a narrowly circumscribed set of legitimating social interests. Recognizing that too often majority rule can be insensitive to minority religious freedom rights, the limitations clause makes it clear that in addition to mustering sufficient political support to be “prescribed by law,” limitations are only permissible if they additionally further public safety, public order, health or morals, or the rights and freedoms of others. Significantly, as the UN Human Rights Committee’s official commentary on the parallel language of Article 18(3) of the ICCPR points out, the language of the limitations clause is to be strictly interpreted:

Restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.<sup>11</sup> The reference to “public order” as a legitimating ground must be understood narrowly as referring to prevention of public disturbances as opposed to a more generalized sense of respecting general public policies. Significantly, the term for “public order” in the French version of the ICCPR is not “ordre public” in the sense often used in French public and administrative law to refer to the general policies of the community,

---

<sup>9</sup> See, e.g., *Sunday Times v. the United Kingdom*, 30 Eur. Ct. H.R. (ser. A) at 30 (1979); *Kokkinakis v. Greece*, 260-A Eur. Ct. H.R. (ser. A) at 15 (1993); Carolyn Evans, *Freedom of Religion under the European Convention of Human Rights* (Oxford: Oxford University Press, 2001), pp. 138-142; Malcolm Evans, *Religious Liberty and International Law in Europe* (Cambridge: Cambridge University Press, 1997), pp. 319-320.

<sup>10</sup> *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (ECtHR, App. No. 40825/98, 31 July 2008), § 71; *Hasan and Chaush v. Bulgaria*, Eur. Ct. H.R., App. No. 30985/96 (Oct. 26, 2000), paras. 84-87; Carolyn Evans, *supra* note 9, pp. 139-42

<sup>11</sup> United Nations Human Rights Committee, General Comment No. 22 (48) on Article 18, adopted by the U.N. Human Rights Committee on 20 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994), para. 8.

but rather “la protection de l’ordre,”<sup>12</sup> terminology suggesting concrete public disturbance and disorder.

12. Third, even if a particular limitation on freedom of religion or belief passes all the foregoing tests, it is only permissible as a matter of international human rights law if it is genuinely necessary. The decisions of the European Court of Human Rights (hereafter, “the European Court”) in Strasbourg, which has had the most experience adjudicating the meaning of limitation clause language, have made it clear that in most cases analysis turns ultimately on the necessity clause. In the European Court’s decisions, public officials defending a certain limitation can often point to legislation supporting it, and the legitimating grounds of Article 9(2) are broad enough that they can be used to cover a broad range of potential limitations. Insistence that limitations be genuinely and strictly necessary puts crucial brakes on state action that would otherwise impose excessive limitations on manifestations of religion.

13. As the European Court has framed the issue, an interference with religion is necessary only when there is a “pressing social need” that is “proportionate to the legitimate aim pursued.”<sup>13</sup> Clearly, when analyzed in these terms, the issue of necessity must be assessed on a case-by-case basis. However, certain general conclusions have emerged. First, in assessing which limitations are “proportionate,” it is vital to remember that “freedom of thought, conscience and religion is one of the foundations of a “democratic society.”<sup>14</sup> State interests must be weighty indeed to justify abrogating a right that is that significant. Second, limitations cannot pass the necessity test if they reflect state conduct that is not neutral and impartial,<sup>15</sup> or that imposes arbitrary constraints on the right to manifest religion.<sup>16</sup> Discriminatory and arbitrary government conduct is not “necessary”. In particular, state regulations that impose excessive and arbitrary burdens on the right to associate and worship in community with others—such as burdensome registration requirements—are

---

<sup>12</sup> Carolyn Evans, *supra* note 9, p. 150; Manfred Nowak & Tanja Vospernik, *Permissible Restrictions on Freedom of Religion or Belief*, in Lindholm, Durham and Tahzib-Lie (eds.), *Facilitating Freedom of Religion or Belief: A Deskbook* (Leyden: Martinus Nijhoff Publishers, 2004) 152-53 & n. 23.

<sup>13</sup> See, e.g., *Kokkinakis v. Greece*, 17 E.H.R.R. 397 (1994)(ECtHR, May 25, 1993), para. 49; *Wingrove v. United Kingdom*, 23 Eur. Ct. H.R. (ser.A) 1937 (1996), para. 53; *Manoussakis and Others v. Greece*, 23 E.H.R.R. 387 (1997)(ECtHR, Sept. 26, 1996), paras. 43-53; *Serif v. Greece* (ECtHR, Dec. 14, 1999, para. 49; *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 119.

<sup>14</sup> *Metropolitan Church of Bessarabia v. Moldova* (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 114.

<sup>15</sup> *Id.*, para. 116.

<sup>16</sup> *Ibid.*, para. 118; *Manoussakis and Others v. Greece*, 23 E.H.R.R. 387 (1997)(ECtHR, Sept. 26, 1996), paras. 43-53.

impermissible.<sup>17</sup> In general, where religious groups can point to alternative ways that a particular state objective can be achieved that would be less burdensome for the religious group and would substantially accomplish the state's objective, it is difficult to claim that the more burdensome alternative is genuinely necessary.

14. The foregoing summary of the requirements of the "limitations clause" that govern when limitations may be imposed on manifestations of religion under international law make it very clear that any limitations must be very carefully limited. It is not enough to say that a particular limitation is justified by "health" or "safety" or one of the other specifically mentioned legitimating grounds for limitations. It is necessary to go further and show that they are not vague (a problem with many of the provisions). Even more importantly, it is necessary to show that there is a pressing social need for the limitation, and that the limitation is narrowly tailored to avoid undue burdens on religious freedom, and that it is non-discriminatory. Each individual limitation proposed by the Draft Law needs to be able to meet this test. The recurrent problem with many of the provisions of the Proposed Draft Law is that they fail to do so.

## **B. Recurring Issues**

Several concerns arise in multiple provisions of the Proposed Draft Law. These are mentioned in the provision-by-provision analysis, but it is worth highlighting major recurring problems that run through many of the provisions.

### **Vagueness**

15. Many provisions of the Draft Law are vague, and fail to give clear notice to organizations and individuals and invite abuse of authority and discrimination by officials.

16. Several vague terms are given as bases for restricting religious freedom. These vague terms include "spiritual security" (Article 1, subsection 2), which is highly vague and invites the government to limit the religious activity based on subjective assessments of perceived spiritual harms. The law ought to be reformulated along the lines of Article 18(3) ICCPR or Article 10(2) CISCHR. These cover the legitimate concerns of the state without running risks of undue intrusion of the state into protected freedom rights.

---

<sup>17</sup> Metropolitan Church of Bessarabia v. Moldova (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 118.

17. Other vague terms, such as in Article 5, refer to what the state “does not allow”: “religious fanaticism and extremism, actions directed to opposition and aggravation of relations, rousing of religious hatred between different religious organizations.” The vagueness of terms such as “fanaticism and extremism” and the vagueness and overly broad character of the phrase “actions directed to opposition and aggravation of relations” could allow the government to engage in impermissible and disproportionate restrictions on freedom of religion. Various beliefs can seem “extreme” or “fanatical” to those with other beliefs; the state should not be in a position to make judgments on the beliefs of its citizens. Article 18 of the ICCPR and Article 10 of the CISCHR make clear that limitations can only be placed on *manifestations* of religion, not the beliefs themselves. Tensions arising from denominational disagreements must also be tolerated; hence the banning of “actions directed to opposition and aggravation of relations, rousing of religious hatred between different religious organizations,” is disproportionate and overly broad.

18. Article 5’s limitation on religious organizations “attempt[ing] to exert pressure on government bodies, officials” is also vague and overly broad. Is expressing a position on legislation or state activities that affect public morality or religious organizations an “attempt to exert pressure on government bodies”? There is no way for an individual to know in advance exactly how this language will be construed.

19. In addition, Article 12’s bases for denial of registration and suspension of activity of missions are excessively vague: “if its activity has a threat to the state and social [public] security, the interethnic and ecumenical concord, health and morality of the population” (subsections 5 and 8). The bases for refusal of registration are similarly vague: posing “a threat to the state and social security, the interethnic and ecumenical concord, health and morality of the population, or in other cases anticipated by legislation” (subsection 10). To compound the difficulty, it is also not clear why these bases differ. Again, it would be preferable to use the language drawn from the international limitations clauses. While these are also unavoidably general in some sense, they are not as vague or as likely to be subject to manipulation, at least in part because there is a long history of refining and specifying the classical terminology through courts.

20. Subsection 10 of Article 12 states that a mission can be refused registration or re-registration if its aims and activity contradict “norms of the Constitution of the Kyrgyz Republic and other legal acts of the Kyrgyz Republic.” Does this only cover activity within the Kyrgyz Republic or activity performed abroad, where that activity may or may not be illegal?

21. Article 13 subsection 6 indicates that missionaries can be denied registration “if this may endanger the public safety, social order, interethnic and ecumenical consensus, social health and morality.” These bases are vague and are wider than those permitted under Article 18 of the ICCPR. Specifically “interethnic and ecumenical concord” is vague and not a permissible basis on which to limit religious freedom.

22. Article 15 provides grounds for liquidation of a religious organization, such as for fomenting “religious discord,” “coercion to family fragmentation leading to family disruption.” Courts have legitimate grounds to assess whether a religious organization intentionally seeks to coerce family disintegration. However, it is important to make sure this provision is drafted so as to avoid discrimination against less popular groups. In fact, there are few religious groups that intentionally seek to coerce the splitting up of families. Determining the causation of family break-ups is very difficult because of the subjective nature of the relationships. The reality is that different members of a family may be attracted by different religious teachings; the individual family members have the right to “have or adopt” a religion of their choice. ICCPR Article 18(3). The fact that some tensions result is not grounds for banning particular religious organizations. Note that a provision of this nature is particularly likely to be invoked in a discriminatory way. Imagine a situation in which there is a family that belongs to one of the prevailing religions of a country, and one of the members decides to join a smaller, less well-known religious community. It may well be that the smaller religious community encourages family unity, but that the members of the family belonging to the prevailing group oust the family member who has converted to the smaller group. It is extremely unlikely that a situation of this kind will be used as evidence for banning or dissolving the prevailing religion, even though the coercion for family break-up is emanating from its adherents. On the contrary, it is all too likely to be taken as an excuse for taking action against the smaller group.

These situations are inevitably complex, but the provisions are vague and highly likely to be administered in discriminatory ways.

23. Article 15 also contains a number of other vague terms that are open the way for abuse and discrimination, such as “state safety” and fomentation of “persecution.”

24. Vague terms and phrases are also used as definitions, such as the definition of “religious activities,” in Article 3, which twice includes unspecified “other activities.” This is particularly problematic given this Proposed Draft Law, which places restrictions on individuals and organizations performing “religious activities” without registration. Other vague definitions include “opposition to interests of the society” given as part of the definition of cult (“sekt”) in Article 3.

25. In many cases, the vagueness will create uncertainty and inconsistencies in application of the law. For example, Article 5 also states that when ministers of religion “work” at the state or in municipal institutions “their activity as ecclesiastic persons, is suspended for the corresponding term.” The underlying idea here is that when ministers of religion assume public roles, they must give up their ecclesiastical roles for corresponding periods. This assures a strong separation of church and state, but there is vagueness at the border. Would an imam or pastor serving on an advisory committee on, for example, chaplains in the military, be forced to give up their ecclesiastical role? What about those serving on a task force on education, alcoholism, or serving on a government council or committee?

26. A particularly vague term which leaves broad room for discrimination and inconsistent application is the “theological expertise” or perhaps more accurately, the “religious studies expertise” (Article 11 and 12) which can be performed as part of the review of a request for registration. The Draft Law does not define the underlying Russian term, or state what the purpose of the expertise is, nor limitations on methods or objects of examination. Nowhere is the state barred from making theological judgments on the beliefs of a group. The European Court of Human Rights’ interpretation of Article 9 is helpful in understanding the content of freedom of religion in international norms: “The right to freedom of religion as guaranteed under

the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.”<sup>18</sup>

### **Mandatory and discriminatory registration requirements**

27. The Draft Law requires registration of religious organizations and missions of foreign religious organizations, penalizes individuals performing activities on behalf of an unregistered religious organization (Article 9), and penalizes “evasion of religious organizations from the registration at the state body on religious affairs” (Article 11).

28. Requiring registration before a religious organization or mission can operate is a violation of core religious freedom. These provisions violate ICCPR Article 18 which established the right to manifest one’s religion or belief “in worship, observance, practice and teaching” “either individually or *in community with others*” (emphasis added). OSCE commitments also provide that states will “recognize, respect and furthermore agree to take the action necessary to ensure the freedom of the individual to profess and practice, alone or *in community with others*, religious or belief acting in accordance with the dictates of his own conscience”<sup>19</sup> (emphasis added). Further, OSCE commitments<sup>20</sup> and the European Convention<sup>21</sup> guarantee the right “to freedom of peaceful assembly and to freedom of association with others” and the OSCE commitments require states to “respect the right of (...) religious communities to establish and maintain freely accessible places of worship or assembly.” (Vienna Concluding Document, par. 16.4)

29. The decision whether or not to register with the state may itself be a religious one, and the right to freedom of religion or belief should not depend on

---

<sup>18</sup> Manoussakis and Others v. Greece, 23 E.H.R.R. 387 (1997)(ECtHR, Sept. 26, 1996), para. 48.

<sup>19</sup> Concluding Document of Madrid – The Second Follow-up Meeting, Madrid, 6 Sept. 1983, “Questions relating to Security in Europe,” par. 12.

<sup>20</sup> Charter of Paris for a New Europe/Supplementary Document to give effect to certain provisions contained in the Charter of Paris for a New Europe, Paris, 21 Nov.1990 (“We affirm that, without discrimination, every individual has the right to (...) freedom of association and peaceful assembly.”); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 “[participating States reaffirm that] “(9(2) everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards; (9(3)) the right of association will be guaranteed.”)

<sup>21</sup> Article 11.

whether a group has sought and acquired legal entity status.<sup>22</sup> The right to manifest religion “either individually or in community with others and in public or private,” ICCPR Article 18(1) does not depend on a grant of entity status from the state. While a group that has not sought legal entity status cannot expect to have all the benefits of that status, a ban on all operation and activity without registration is extremely disproportionate and is clearly an unnecessarily broad limitation of freedom of religion or belief. As stated in the OSCE Guidelines, “Registration of religious organizations should not be mandatory *per se*, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits.”<sup>23</sup> That is, legal systems may impose certain minimal requirements for groups that desire to obtain legal entity status, but states may not make acquisition of legal entity status a condition for individuals or groups engaging in religious activity. The OSCE Guidelines further provide: “Individuals and groups should be free to practice their religion without registration if they so desire.”<sup>24</sup>

30. The Draft Law sets forth requirements for registration of religious organizations, missions, central administrative bodies of religious organizations, and religious associations. The nature of these and relationship between these are not spelled out clearly, leaving considerable confusion.

### **Provisions that Interfere with Religious Autonomy**

31. Article 9 sets forth the procedure for establishing a central administrative body of a religious organization. The procedure for establishing the central administrative body, however, may interfere with the right of a religious community to autonomy in its own affairs. Must the constitutive meeting be comprised of already registered organizations? What is the exact procedural sequence? The law ought to allow religious groups flexibility to organize in accordance with their own doctrines and traditions.

32. Article 9 also sets forth requirements for registration of a “religious association,” but nowhere does the law clarify what a “religious association” is, what its functions are, what benefits accrue from forming one, and what distinguishes it from a “religious organization” or a “central administrative body.” The requirement

---

<sup>22</sup> See Vienna Concluding Document, par. 16.4 (states “respect the right of (...) religious communities to (...) organize themselves according to their own hierarchical and institutional structure.”).

<sup>23</sup> *Guidelines*, 17.

<sup>24</sup> *Id.*

that associations have at least 10 “communities,” at least one of which has been operating in the Kyrgyz Republic for at least fifteen years may block a religious community from using a form of organization that corresponds to the way it would prefer to structure its own affairs. It is not clear what constitutes a “community”. The term “common denomination” is also vague: are Sunni and Shiite Muslims a “common denomination”? Or Catholics, Protestants, and Orthodox Christians? Who decides? In fact, such choices ought to be left to the autonomy of the group seeking to register.

33. Missions are defined in Article 3 as “representatives of a state sent to another country with a certain mission or an organization engaged in propagation of a religion.” But in Article 9, a mission of a foreign religious organization is defined as an organization “having administrative centers located beyond the Kyrgyz Republic or having foreign citizens in its administrative body.” In addition to the problematic tension between these sections, the definition of “having foreign citizens in its administrative body” in effect precludes the community from choosing its own officers. If one of many members of the administrative bodies is a non-citizen, does the entire organization become foreign? What constitutes an “administrative body”?

34. A particularly serious omission in the law is the failure to provide that the grounds for refusal of registration of religious organizations must be given, and in writing, and that an appeal must be possible before a tribunal against decisions of refusal; the relevant procedure must, if need be, indicated in detail (see Article 11). The indication of the grounds for refusal and of the possibility to appeal against refusal is essential. It would indeed be appropriate that the law contain a general clause providing for the need for any substantive decision under this law to set out in writing the reasons on which it is based, as well as the explicit possibility to appeal against it before a tribunal.

### **Impermissible Minimum Membership and Duration Requirements**

35. Problems with unnecessary and disproportionate discrimination plague the various entities. Article 9 of the Proposed Draft Law requires that religious organizations must have 200 members. It also specifies that central administrative bodies of religious organizations can only be established by organizations with “denominations acting in at least nine regions of the Kyrgyz Republic.” Religious

associations must have at least 10 “communities,” at least one of which has been operating in the Kyrgyz Republic for at least fifteen years. Missions, no matter how large or old, cannot have legal entity status. All of these requirements and limitations do not appear to be tied to any reasons that appear to be necessary in a democratic society to “protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”<sup>25</sup> They interfere with the right of religious communities to acquire religious entity status in accordance with OSCE commitments.<sup>26</sup> Instead, the requirements and limitations appear to unfairly discriminate against smaller and newer groups. As stated in the OSCE Guidelines, “High minimum membership requirements should not be allowed with respect to obtaining legal personality,” and “It is not appropriate to require lengthy existence in the State before registration is permitted.”<sup>27</sup> A country may differentiate between certain types of religious institutions on the basis of objective characteristics where this is relevant to the state program or activity in question. But it may not use minimum membership and duration requirements for acquiring legal entity status altogether.

### **Right to Legal Entity Status**

36. Reasonable access to a legal entity status with suitable flexibility to accommodate the differing organizational forms of different communities, however, is a core element of freedom to manifest one’s religion.<sup>28</sup> OSCE commitments call for the recognition of legal entity status.<sup>29</sup> There is now extensive persuasive authority from the European Court of Human Rights that there is a right to acquire legal entity status,<sup>30</sup> and that the legal entity status thus made available must be sufficient for a

---

<sup>25</sup> ICCPR Article 18.

<sup>26</sup> See, e.g., Principle 16.3 of the OSCE’s 1989 Vienna Concluding Document.

<sup>27</sup> OSCE Guidelines, *supra* note 2, Section II(F).

<sup>28</sup> Metropolitan Church of Bessarabia v. Moldova (ECtHR, Dec. 13, 2001, App. No. 45701/99) (finding a violation of Article 9 in denying reasonable access to legal entity status).

<sup>29</sup> Vienna Concluding Document, par. 16.3 (states will “grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries.”).

<sup>30</sup> Canea Catholic Church v. Greece, 27 EHRR 521 (1999) (ECtHR, App. No. 25528/94, 16 December 1997) (legal personality of the Roman Catholic Church protected); United Communist Party of Turkey v. Turkey (ECtHR, App. No. 19392/92, 30 January 1998); Sidiropoulos & Others v. Greece (ECtHR, App. No. 26695/95, 10 July 1998); Freedom and Democracy Party (ÖZDEP) v. Turkey (ECtHR, App. No. 23885/94, 8 December 1999); Hasan and Chaush v. Bulgaria (ECtHR, App. No. 30985/96, 26 October 2000); Metropolitan Church of Bessarabia v. Moldova (ECtHR, App. No. 45701/99, 13 December 2001); Moscow Branch of the Salvation Army v. Russia, ECtHR, App. No. 72881/01, Oct. 5, 2006; Church of Scientology Moscow v. Russia (ECtHR, App. No. 18147/02, 5 April 2007); Svyato-Mykhaylivska Parafiya v. Ukraine (ECtHR, App. No. 77703/01, 14 September 2007); Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria (ECtHR, App. No. 40825/98, 31 July 2008), §62.

religious community to carry out the full range of its affairs.<sup>31</sup> To the extent the Proposed Draft Law imposes undue limitations on access to legal entity status, it violates this right.

### **Limitations of rights to expression and dissemination**

37. Numerous provisions of the Draft Law inappropriately restrict freedom of expression and rights to disseminate religious and other materials through: censorship, restrictions on who can produce religious materials, restrictions on where religious materials may be distributed, restrictions on who may disseminate religious ideas and material, and compulsory use of the full name of the religion on all religious materials. All of these are gross violations of freedom of expression and religion.

38. Censorship of religious materials is introduced in Article 23 subsection 1 and 2 (requiring religious organizations and missions to submit all imported material for examination, and providing for review of religious material to be distributed by a state religious expert).

39. Article 23 subsection 4 also restricts where religious materials can be distributed, banning distribution of religious materials “in public places (in streets, in squares), as well [as] visits to private apartments, children’s institutions, schools, and higher education institutions” and limiting distribution of religious literature to “religious organizations in beneficially owned properties, as well as in places allocated for these purposes in the standard procedure by local government institutions.” Article 23(5) permits the purchase of religious literature and objects and materials of religious orientation “only in worship places and in specialized shops.” Article 22 of the Draft Law also provides that the state can limit “worship services, religious exercises, rituals, and ceremonies, as well as other public events” that are “carried out in places that were not designed specifically for these purposes” and only appears to permit circumcision by Muslims, baptism by Christians, and marriage by Christians and Muslims.<sup>32</sup> Article 23(3) also limits publication of religious materials to registered religious organizations.

---

<sup>31</sup> Moscow Branch of The Salvation Army, App. No. 72881/01, 5 Oct. 2006, §§74, 84; Svyato-Mykhaylivska Parafiya v. Ukraine, App. No. 77703/01 (14 September 2007), § 123.

<sup>32</sup> The law does not forbid other groups from engaging in these acts, but only specifically gives permission to these groups.

40. Article 5 prohibits “actions directed to proselytizing of the faithful from one denomination to another (proselytism), as well as any other illegal missionary work.” The Draft Law does not make clear what “illegal missionary work” is.

41. Article 13 requires annual registration (for up to 3 years) of foreign missionaries. Foreign missionaries are prohibited from performing religious activities in the Kyrgyz Republic without registration.

42. Article 4 prohibits “involvement of minors into religious organizations.”

43. These provisions clearly violate OSCE commitments (“states will (...) allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials”<sup>33</sup> and “respect the rights of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief”<sup>34</sup>), as well as the Kyrgyz Republic’s protections for dissemination of information in Article 2 (“Every person in the Kyrgyz Republic has the right (...) to the free expression and dissemination of thoughts, ideas, and opinions, to freedom of literary, artistic, scientific, and technical creation, and to freedom of the press and transfer and dissemination of information”). In addition, these limitations violate commitments to freedom of speech by OSCE participating States,<sup>35</sup> the rights listed in Article 10 of the European Convention

---

<sup>33</sup> Vienna Concluding Document, par. 16.10.

<sup>34</sup> Vienna Concluding Document, par. 16.9.

<sup>35</sup> Vienna Concluding Document, par. 34 (“[states] will ensure that individuals can freely choose their sources of information. In this context they will (...) allow individuals, institutions and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information material of all kinds. To these ends they will remove any restrictions inconsistent with the abovementioned obligations and commitments.”); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, par. 9.1 ([the states reaffirm that] “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright.”); Concluding Document of Budapest, 6 Dec. 1994 para. 36 (“The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society.”); Istanbul Document, Istanbul, 19 November 1999, Charter for European Security: III Our Common Response, par. 26 (“We reaffirm the importance of (...) the free flow of information as well as the public’s access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for (...) unimpeded transborder and intra-State flow of information(...).”).

(“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”), as well as likely Article 14(6) of the Constitution of the Kyrgyz Republic, which bans censorship and provides for the right to freely disseminate information.<sup>36</sup>

### **Rights of non-citizens**

44. The Draft Law repeatedly fails to protect the rights of freedom of religion or belief of non-citizens residents in the Kyrgyz Republic.

45. Numerous articles, such as Articles 1, 2, and 4 protect the rights of citizens to freedom of religion or belief, but not non-citizens.

46. Article 4 states that “foreign citizens and people having no citizenship, who are legally staying in the Kyrgyz Republic, are entitled to freedom of conscience, similarly to the citizens (...).” “Similar” rights to freedom of conscience are too vague and overlook the rights of non-citizens to freedom of religion or belief.

47. Article 9 defines religious organizations in the Kyrgyz Republic as “voluntary associations of citizens of the Kyrgyz Republic (...)” and can only be formed by 200 citizens.

48. Article 9 defines a mission of a foreign religious organization as an organization “having administrative centers located beyond the Kyrgyz Republic or having foreign citizens in its administrative body.” If foreign citizens are involved in the administrative body, it must register as a mission, which is subject to annual re-registration and does not have legal entity status.

49. Article 13 requires registration of foreign missionaries before they are permitted to perform religious activities in the Kyrgyz Republic, but no provision requires registration of citizen missionaries before they can engage in religious activities.

50. These provisions are highly discriminatory. Just as citizens have the right to freedom of religion or belief, so too do foreign citizens residing in the Kyrgyz

---

<sup>36</sup> Constitution of the Republic of Kyrgyzstan, Article 14(6): (“Everyone shall have the right to freedom of thought, speech and press, as well as to unimpeded expression of those thoughts and beliefs. No one shall be forced to express their opinions and beliefs.”)

Republic. Article 18 of the ICCPR states, “*Everyone* shall have the right to freedom of thought, conscience and religion” (emphasis added).

#### **IV. ARTICLE-BY-ARTICLE ANALYSIS**

##### **Chapter I, Article 1**

51. Article 1(1) guarantees “protection of rights and interests of citizens, irrespective of their religion.” This should also include protections of the rights and interests of non-citizens residing in the Kyrgyz Republic. Article 18 of the ICCPR states, “*Everyone* shall have the right to freedom of thought, conscience and religion” (emphasis added). Some phrases in Article 1 protect “persons and citizens.” It would be simpler and more inclusive to consistently use the term “person.”

52. Article 1(2) permits restrictions on freedom of religion or belief for “securing rights and freedoms of other persons, social and spiritual security, order, territorial integrity and protection of the constitutional order.” This list permits for wider restrictions on freedom of religion or belief than those enunciated in the ICCPR Article 18(3) and Article 10 of the CISCHR, which only permits limitations on the freedom to manifest religion or belief that are “prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” Specifically, “territorial integrity” and “public security” are not legitimate bases for limiting freedom of religion or belief under international instruments (except of course when such threats are imminent and would also threaten public health, safety, and order). This section of the Draft Law also appears to be in tension with Article 4(1) of the Draft Law, which tracks more closely ICCPR Article 18 and Article 10 of the CISCHR. It would be helpful if this section also tracked ICCPR Article 18 more closely.

53. In particular, the term “spiritual security” is highly vague and invites the government to limit the religious activity based on its evaluation of the veracity of the beliefs and the perceived spiritual harm of particular beliefs.

##### **Chapter I, Article 2**

54. Article 2 states that “nothing in the legislation on freedom of conscience and religious organizations must be interpreted in the sense of denial or impairment of rights of a person and a citizen to freedom of conscience.” This could be interpreted as discriminating against non-citizens. Just as citizens have the right to freedom of religion or belief, so too do foreign citizens residing in the Kyrgyz Republic. Article 18 of the ICCPR states, “*Everyone* shall have the right to freedom of thought, conscience and religion” (emphasis added). The provision ought to be revised to make it clear that its protections apply to all persons.

55. Article 2(2) guarantees rights arising from the international instruments “which have legally entered into force and which the Kyrgyz Republic is the party of.” This wording is somewhat different than that of Article 31, which addresses a similar topic. It would be best to make the relationship between the two more clear. The basic principle of giving priority to international law norms is both appropriate and important.

### **Chapter I, Article 3**

56. In Article 3, “divine worship” is defined as “an aggregate of religious ceremonies and actions performed by clergymen in accordance with the elaborated ritual and requirements of doctrine.” This does not consider that in some religious traditions, worship services may also be performed by non-clergy. In addition, it is not clear why religious ritual must be “elaborated.” In fact, the draft law makes a distinction between “divine worship” (Article 3(2) and “cult” (Article 3(5)). The latter may be performed by non-clergy (“believers”). The problem in this clause, however, is the use of a Russian term meaning “magic ceremonies” which may be interpreted as related to all “cult” activities. In general, the definitions tend to be too narrow and to presuppose particular traditional forms of religious activity

57. Article 3 defines “creed” as “elaborated doctrine belonging to a religion having traditional worship.” The use of the word “traditional” unduly discriminates against new religious groups. The United Nations Human Rights Committee, in interpreting Article 18 of the ICCPR, has stated that “The terms belief and religion are to be construed broadly. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views

with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.”<sup>37</sup> What the Committee says with respect to belief and religion applies equally with respect to the many other terms that are defined in Article 3. Religious freedom rights should not be restricted by definitional fiat. Many of the terms are defined as though religious activity is primarily a matter of worship, but in fact, it is much broader, including at a minimum “teaching, practice and observance”. See Article 18(1) ICCPR.

58. Article 3 defines “mission” as “representatives of a state sent to another country with a certain mission or an organization engaged in propagation of a religion.” “Representatives of a state” is probably unduly narrow—they may represent inter-governmental organizations such as the EU or the OSCE. Is the definition narrow in another sense, that it restricts “missions” to representatives of states, rather than religions.

59. Article 3 defines “religious activity” as “the activity directed to satisfaction of religious needs of the faithful, propagation of religions, the religious education, performance of divine worship, prayerful meetings, preaching, training of theological specialists and clergymen, missionary work, as well as other activities directed to organizational and material provision of the worship of a religious organization (issuing and distribution of religious literature, manufacturing and distribution of ceremonial objects, manufacturing of clothes for clergymen and clerical employees and other activities).” This definition twice uses the phrase “other activities” which is too vague, and could include anything. This is particularly problematic given this Draft Law, which places restrictions on individuals and organizations performing “religious activities” without registration.

60. Article 3 defines freedom of conscience in terms of a right to religious beliefs, but international instruments also protect the right not to have religious beliefs. Also, it uses the phrase “which are not prohibited by law” as part of the

---

<sup>37</sup> United Nations Human Rights Committee General Comment No. 22 (48), adopted by the U.N. Human Rights Committee on 20 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994), par. 2.

description of the freedom, while it should more appropriately belong as a limitation to the freedom.

61. Article 3's definition of a clergyman as "a person authorized by the corresponding religious organization (association) to perform the ecclesiastical, imam, vicarial or predicant service" is too narrow. There can be other tasks and functions of clergy in other religions.

62. Article 3 defines a cult ("sekt" in the Russian translation) as "1. A religious movement (community), which has separated from the main denomination and does not agree with it, and which demonstrates indifference and opposition to interests of the society (...)." This is a highly problematic definition. "Interests of the society" is a very vague term, and it is not clear why this definition is a necessary part of the Draft Law. It would be preferable to avoid disparaging terminology about religious groups all together.

#### **Chapter I, Article 4**

63. Article 4 contains some very positive elements: guarantees of freedom of conscience, non-compulsion in the manifestations of religion, and a limitations section that largely tracks ICCPR Article 18. Some of the differences in wording may simply be a matter of translation. The final phrase in Paragraph 7 comes a little to close to "national security," which, as mentioned above, is not a satisfactory ground for limiting manifestations of religion, unless there is also an imminent threat to one of the enumerated legitimating grounds set forth in the limitations clauses of international instruments.

64. A few of the terms in Article 4 are vague or are problematic. First, while "freedom of conscience" is defined elsewhere in the Draft Law, "atheistic belief" is not. It would be preferable to speak of "non-religious belief systems;" "atheistic belief" is a too narrow category.

65. Article 4 states that "indication of a citizen's attitude to religion in the official documents is not allowed." While it makes sense to avoid situations that could invite discrimination against individuals based on recorded religious preferences, it is probably not feasible to completely eliminate all references to the religion of some citizens in official documents. These may be necessary, for example, in registering religious organizations or coordinating religious education and

chaplains in the military. However, compulsory disclosure of religion should be limited as much as possible, because this potentially trenches on the absolute freedom on forum internum.

66. Article 4 also states that “Any compulsion in determining a citizen’s attitude to religion, practicing or not practicing a religion, participation or non-participation in divine service, religious rites and ceremonies, religious training is prohibited.” This is a helpful provision in limiting compulsion in the sphere of religion or belief, but the list is not exhaustive. Other religious activity that is not mentioned could be considered areas permitted for discrimination. It would be best to make this list even more broadly inclusive. In the end, the wording of ICCPR Article 18(3) may be preferred.

67. Article 4’s description that “purposeful insult of feelings of citizens, due to their attitude to religion” entails liability appears to be overly broad and a disproportionate limitation on freedom to manifest and disseminate religious beliefs. What does it mean to insult someone’s religious feelings? Is it enough to disagree on religious doctrine? If so, this would violate a core element of religious freedom and present an impermissible limitation on the manifestation of religious beliefs. Limitations can be made when necessary to “protect the fundamental rights and freedoms of others,”<sup>38</sup> or where there is “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence,”<sup>39</sup> but laws that are overprotective of religious sensitivities could have the effect of imposing undue constraints on fundamental rights to freedom of expression and to the expressive side of freedom of religion or belief. As the Council of Europe’s Venice Commission recently noted,

religious groups must tolerate, as other groups must, critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to intentional and gratuitous insult and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion(...). The sensitivities of the religious groups must be taken into due account by the national authorities when they are to decide whether or not a restriction to the freedom of expression is to be imposed and implemented. Modern societies, however, must not become hostage to these sensitivities, not even when they manifest across the world and in places other than those where the incident

---

<sup>38</sup> ICCPR Article 18(3).

<sup>39</sup> ICCPR Article 20(2).

giving rise to them happened. Open discussion of controversial issues is a vital element of democracy.<sup>40</sup>

68. Indeed, the European Court of Human Rights has made clear that under Article 9 of the European Convention, even though denominational differences may result in discord, what is at stake in such cases is “the preservation of pluralism and the proper functioning of democracy (...). Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.”<sup>41</sup> Fortunately, it appears that this section is only describing other legislation and does not describe a punishable offense.

69. Article 4 states that “Involvement of minors into religious organizations is not allowed.” This ban on involvement of minors into religious organizations violates the rights of the child and the rights of the parents to religious freedom. This provision violates both Article 18(4) of the ICCPR and the Convention for the Rights of the Child<sup>42</sup> which provide in slightly different terms that child has the “right to freedom of thought, conscience and religion”<sup>43</sup> and that parents have the liberty to ensure the religious and moral education of their children in conformity with their own convictions.<sup>44</sup> Mature minors also have rights to the exercise of their religious freedom. As provided by the Convention on the Rights of the Child, Article 14.2, parental direction of the child’s right to freedom of religion must be exercised “in a manner consistent with the evolving capacities of the child.” One of the rights of the child is “the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds (...)”<sup>45</sup> Preventing individuals or groups from “involving” minors into religious organizations limits both the right of the child to receive information and the right of individuals and groups to peaceably share their convictions (see discussion under Chapter I, Article 5).

---

<sup>40</sup> Venice Commission, Preliminary Report adopted on 16-17 March 2007 (CDL-AD (2007)006).

<sup>41</sup> Metropolitan Church of Bessarabia v. Moldova, ECtHR, App. No. 45701/99, 13 December 2001, para. 116, *citing* Serif v. Greece, ECtHR, App. No. 38178/97, 1999, para. 53.

<sup>42</sup> Convention On the Rights Of The Child, Adopted and Opened for Signature by United Nations General Assembly Resolution 44/25 on 20 November 1989, Entered into Force 2 September 1990.

<sup>43</sup> Convention on the Rights of the Child, Article 14(1); see also ICCPR Article 18.

<sup>44</sup> See also OSCE Vienna Concluding Document, para. 16(7).

<sup>45</sup> Convention on the Rights of the Child, Article 13(1).

70. Article 4 states that “foreign citizens and people having no citizenship, who are legally staying in the Kyrgyz Republic, are entitled to freedom of conscience, similarly to the citizens (...)” This phrase contains a few ambiguities and problems. First, freedom of religion should not be limited to legal aliens. Under international agreements, illegal residents also have a right to freedom of religion or belief. Article 18 of the ICCPR states, “*Everyone* shall have the right to freedom of thought, conscience and religion” (emphasis added). Second, citizens and non-citizens have a right to non-religious beliefs as well as freedom of religion. Perhaps conscience covers both. Finally, having rights “similar” to those of citizens is too vague a concept. This may be a translation problem. Apparently the Russian for “similarly” is better translated here as “equally with,” which removes the problematic vagueness.

71. Article 4’s limitation clause largely tracks that of ICCPR Article 18 (“Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”), but includes a few extra limitations which are not permissible under international instruments. For example, “legal interests” (as opposed to fundamental rights and freedoms) of a person and a citizen and “security of the state” are listed as legitimating grounds for limiting manifestations of religion. The limitation clause also indicates that limitations may be imposed “to protect the basis of the constitutional order.” To the extent that immediate threats to the constitutional order are involved, there is authority that the state may act to counteract such threats.<sup>46</sup> It would be important to add limiting language indicating that the threat is realistic and reasonably imminent.<sup>47</sup> In any event, this limitations clause is inconsistent with that listed in Article 1, subsection 2.

72. Article 4 states that “Activity of religious organizations and other organizations contributing to extremism, terrorism, separatism, illegal turnover of drugs and other crimes, as well as propagandizing these, entail liability in accordance with legislation of the Kyrgyz Republic.” It is not clear why this is included in the Draft Law. If these are crimes detailed in other legislation, then there is already

---

<sup>46</sup> See *Refah Partisi v. Turkey*.

<sup>47</sup> See *Metropolitan Church of Bessarabia v. Moldova*.

liability for these actions. If not, the terms are unduly vague and ought to be addressed through separate legislation.

### **Chapter I, Article 5**

73. Article 5 states that “No doctrine of religious organizations can be established as a compulsory one for the citizens.” Taken literally, this would mean that a compulsory religion could be established for non-citizens residing in the Kyrgyz Republic. Since “*everyone* shall have the right to freedom of thought, conscience and religion” (ICCPR Article 18, emphasis added), this provision should be broadened to include all residents as well. A similar problem of underinclusiveness is found in the phrase in Article 5 that “the state contributes to establishment of relations of mutual tolerance and respect between the citizens practicing a religion and the ones not practicing it (...)”

74. Article 5 states that “Relations between the state and religious organizations are regulated by law with account of their influence on formation of spiritual cultural, state and national traditions and mentality of the Kyrgyz Republic people.” First, the phrase “national traditions and mentality of the Kyrgyz Republic people” is vague and should be clarified. Further, while this provision does not in and of itself violate religious freedom, it is important that future legislation implementing this provision also avoid discrimination, in accordance with the Kyrgyz Republic’s constitution, article 15(3) (“All people in the Kyrgyz Republic are equal before the law and the courts. No one may be subjected to any sort of discrimination or abridgment of rights and freedoms because of origin, gender, race, ethnicity, language, faith, political or religious beliefs, or any other conditions or circumstances of a personal or social character.”) and its OSCE commitments (states will “take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers)<sup>48</sup>, as well as retain the Kyrgyz Republic’s constitutionally mandated secularism (Article 1 of the Constitution). In addition, legislation implementing more

---

<sup>48</sup> Vienna Concluding Document, par. 16(1).

cooperationist approaches should be careful to avoid limitations on the internal autonomy of religious organizations.

75. Article 5 also contains some very vague terms that would need to be clarified, such as “fanaticism” and “extremism.” The vagueness of these terms and the verbosity and vagueness of the phrase “actions directed to opposition and aggravation of relations” could allow the government to engage in arbitrary, discriminatory and disproportionate restrictions on freedom of religion. Various beliefs can seem “extreme” or “fanatical” to those with other beliefs; the state should not be in a position to make judgments on the beliefs of its citizens. Article 18 of the ICCPR and Article 9 of the European Convention make clear that limitations can only be placed on *manifestations* of religion, not the beliefs themselves. Limitations may be imposed under the narrowly drawn conditions identified by the religion clauses. Otherwise, however, tensions arising from denominational disagreements must also be tolerated; hence the banning of “actions directed to opposition and aggravation of relations, rousing of religious hatred between different religious organizations,” is disproportionate and overbroad. As the OSCE Guidelines state, “it is important that laws focus on genuinely dangerous *acts* or commission of *violence* and not unduly grant police powers to the State to suppress groups that are merely disfavored or unusual.”<sup>49</sup>

76. It is important to remember, for example, that some religious groups may foster ideas that are as dangerous as Nazi ideology, which some states have declared to be illegal. Thus, a number of OSCE participating States have concluded that certain ideologies may be legitimately banned. In this sense, modern democracies are not totally neutral. They are committed to fundamental principles of democracy and human rights. However, variations from the normal goals of equal treatment and impartiality need to be justified in terms consistent with the international limitation clauses (e.g., Article 18(3) ICCPR). Even here, it is not mere beliefs that may be sanctioned, but overt manifestation of beliefs. Moreover, the case that these are genuinely harmful to society and to constitutional order must be very clearly and compellingly made, and the grounds for assessing such situations must be sufficiently clear to foreclose abuse of discretion. Great care must be taken to assure that any judgments in this regard are not based on stereotypes and prejudice.

---

<sup>49</sup> *Guidelines*, 9.

77. Article 5 also contains the statement that “the state supports ecumenical peace and harmony.” This is more precisely translated as “peace and accord among religious confessions”. It is not clear how that relates to the secular nature of the state, established at the beginning of Article 5 and in Article 1(1) of the Kyrgyz Constitution.<sup>50</sup>

78. Another provision of Article 5 states, ‘Actions directed to proselytizing of the faithful from one denomination to another (proselytism), as well as any other illegal missionary work, are prohibited.’ Firstly, this appears to be in tension with the permission of missionary work by registered missionaries. The definitions of “missionary work” (“activity directed to propagation of one’s religion among people of other beliefs; it has been mostly developed in Christianity, however, takes place also in Buddhism, Judaism, Islam, etc) and “proselytism” (“the persistent intent to convert the faithful of other religions into one’s religion”) in Chapter I, Article 3 have considerable overlap, and it is not clear how missionary work can be permitted but proselytism be banned.

79. In any case, prohibiting proselytizing is in direct contradiction to international commitments. For many religious communities, peaceable sharing or witnessing of one’s beliefs is a critical element of the right to “manifest” one’s religious beliefs.<sup>51</sup> Missionary work and proselytism are also protected under freedom of speech and the right to disseminate information.<sup>52</sup> OSCE commitments include that states will “[m]ake it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries (...)”<sup>53</sup> and “allow individuals, institutions and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information material of all

---

<sup>50</sup> “The Kyrgyz Republic (Kyrgyzstan) is a sovereign, united, democratic republic, built on the foundations of a secular, rule of law state.”

<sup>51</sup> ICCPR Article 18, European Convention Article 9.

<sup>52</sup> *Kokkinakis v. Greece*, 260-A ECtHR. (ser. A) (1993) (establishing that religious persuasion and non-coercive sharing of religious witness is protected under freedom of religion); see also Const.

Constitution of Kyrgyzstan, Article 14(6) (“Everyone shall have the right to freedom of thought, speech and press, as well as to unimpeded expression of those thoughts and beliefs. No one shall be forced to express their opinions and beliefs”); CISCHR, Article 11 (“Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas by any legal means without interference by a public authority and regardless of frontiers”);

European Convention Article 10 (“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”).

<sup>53</sup> Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975.

kinds. To these ends, they will remove any restrictions inconsistent with the abovementioned obligations and commitments.”<sup>54</sup> States also reaffirm that “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The restrictions on this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.” Requiring registration of missionaries and establishing quotas impose limitations on freedom of religion and freedom of expression that are not consistent with international standards. In contrast to other fields of professional activity, imposing constraints other than notifying the government of activities operates as a constraint on the right to manifest religious beliefs and to engage in expression which cannot be justified under limitation clauses. As the OSCE’s Guidelines make clear: “If legislation operates to constrain missionary work, the limitation can only be justified if it involves coerci[ve]conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved.”<sup>55</sup> The definition of proselytizing activity provided by the Proposed Draft Law is not sufficiently narrow to restrict its coverage exclusively to permissibly prohibited activities.

80. Article 5 also states that “the state (...) does not finance activity of religious organizations or of atheism propaganda.” “Propaganda” is a broad and vague term and would need to be defined. Also, the protection of non-religious beliefs extends to more than atheism.

81. Article 5’s limitation on religious organizations “attempt[ing] to exert pressure on government bodies, officials” is also vague and impermissibly overly broad. Is expressing a position on legislation or state activities that affect public morality or religious organizations an “attempt to exert pressure on government bodies”? Without narrowing this limitation, it appears to place overly broad and unnecessary restrictions on the freedom of speech and the freedom to manifest religious beliefs. Some constraints on the direct involvement in political campaigns may be appropriate, but they need to be narrowly drafted so that they don’t operate as a total ban on all expressive activity of religious communities, and in particular, which

---

<sup>54</sup> Vienna Concluding Document, par. 34.

<sup>55</sup> Guidelines, *supra* note 2, Section II(I).

does not compromise the right of religious groups to take stands on moral or religious issues.

82. Article 5 also states that when ministers of religion “work” at the state or in municipal institutions “their activity as ecclesiastic persons, is suspended for the corresponding term.” The underlying idea here is that when ministers of religion assume public roles, they must give up their ecclesiastical roles for corresponding periods. This assures a strong separation of church and state, but there is vagueness at the border. This should be clarified. Secondly, while some states, based on “particular historical developments” restrict clergy from participating in political activities that are open to other citizens (OSCE Guidelines, page 16), it is an impermissible restriction on the autonomy of religious organizations to try to strip clergy of their religious functions because of government employment. OSCE commitments reflect the importance of this core aspect of religious freedom: states will “respect the right of (...) religious communities to organize themselves according to their own hierarchical and institutional structure; select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State (...)”<sup>56</sup> Perhaps a better approach would be to place limitations on abuse of political office, with specific and necessary limitations on, e.g., the ability of government officials to coerce religious actions from their subordinates or others, engage in actions that appear to use their state office to endorse their religious views, or use state materials for religious purposes.

### **Chapter I, Article 7**

83. Article 7 contains many helpful provisions, such as allowing access to public education irrespective of citizens’ attitude to religion.

84. Article 7 also bars the formation (“arrangement” in the English translation) of religious organizations at educational establishments, except at religious educational establishments. Banning the formation of religious organizations, particularly at the level of secondary and higher education violates the students’ freedom to manifest religion.<sup>57</sup>

---

<sup>56</sup> Vienna Concluding Document, Article 16(d).

<sup>57</sup> Note that mature minors have rights to religious freedom: “States Parties shall respect the right of the child to freedom of thought, conscience and religion.” Convention on the Rights of the Child, Article 14.1. As provided by the Convention on the Rights of the Child, Article 14.2, parental direction of the

85. Article 7 requires that persons teaching religious disciplines at religious education establishments have “a specialized religious education and perform their activities on coordination with the corresponding administration body of the religious organization they are part of.” While this may be a reasonable requirement for some religious traditions, this is a matter for the individual religious organization to determine. OSCE commitments require that the state respect the right of religious organizations to “select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their state.”<sup>58</sup> This selection of teachers of religion is a core element of the autonomy of religious organizations. Interference with this also brings into question the secular nature of the state.

86. It is also unacceptable that Article 7 states “Religious training performed privately is prohibited at all levels of education.” This may only be meant to bar private religious education that uses the public educational system’s facilities, time, or teachers, but it is vague and broad enough that it could be interpreted to bar private religious education by parents or religious organizations, that is in no way connected with the public educational system. This would be a serious violation of the Kyrgyz Republic’s international commitments. OSCE commitments require that the state respect the right of parents “to ensure the religious and moral education of their children in conformity with their own convictions”<sup>59</sup>

### **Chapter I, Article 8**

87. The article states that “The state and its bodies do not hinder the military personnel needs subsequent upon their religious beliefs”. At the same time it states that “Religious symbols, literature and articles of cult are objects of individual usage of the military personnel”. In many religions it is impossible to fulfil religious needs without a common prayer in a special place having special “articles of cult” and sometimes requiring the presence of a clergyman. Such places are not always accessible from the army regiments. In this case the Proposed Draft Law conflicts with the religious rights of the servicemen, as they may require prayer rooms and

---

child’s right to freedom of religion must be exercised “in a manner consistent with the evolving capacities of the child.”

<sup>58</sup> Vienna Concluding Document, Article 16(d).

<sup>59</sup> Vienna Concluding Document, Article 16(7)

related “articles of cult” which cannot always be kept as personal belongings (e.g., in the Orthodox Church lay people cannot touch certain liturgical objects).

88. Article 8 permits alternative civil service for “clergymen and ecclesiastic persons registered in conformity with the established order at a religious organization, whose doctrine does not allow carrying a weapon and serving in the Armed Forces.” While there is no controlling international standard on this issue, the best practice is to allow alternative civil service for all citizens with religious objections to serving in the military. As the OSCE Guidelines state: “the clear trend in most democratic States is to allow those with serious moral or religious objections to military service to perform alternative (non-military) service. In any case, State laws should not be unduly punitive for those who cannot serve in the military for reasons of conscience.”<sup>60</sup> It is helpful that the Draft Law allows for alternate civil service for clergymen and ecclesiastical persons, but best practice would be to extend this right to all those with serious religious or moral objections to military service.

#### **Chapter II, Article 9**

89. Article 9 defines religious organizations in the Kyrgyz Republic as “voluntary associations of citizens of the Kyrgyz Republic (...)”. This does not include non-citizens. Under Article 18 of the ICCPR however, “*Everyone* shall have the right to freedom of thought, conscience and religion” (emphasis added). This article should be amended to provide for non-citizens to be part of religious organizations.

90. Article 9 lists features of religious organizations as “creed; practicing divine worships, other religious rites and ceremonies; religious education and training of their followers.” This list does not necessarily correspond to features of all religious organizations. Some, for example, engage in monastic life, while others focus on humanitarian service or ministry in hospitals. This list should allow for other features than those listed.

91. Article 9 prohibits “activity and operation of religious organizations without being registered at the state body on religious affairs” and “operation of missions in the Kyrgyz Republic, without being registered in the established order.”

---

<sup>60</sup> Guidelines, *supra* note 2, Section II(L) pp.22-23 (citing Recommendation (1987)8 on conscientious objection to compulsory military service, adopted by the Council of Europe Committee of Ministers on 9 April 1987, at the 406<sup>th</sup> meeting of the Ministers’ Deputies, <http://cm.coe.int/stat/E/Public/1987/1987r8.htm>; Commission on Human Rights resolution 2002/45).

Article 9 also penalizes a person performing activities on behalf of an unregistered organization.

92. Requiring registration before a religious organization or mission can operate is a violation of core religious freedom. This provision violates ICCPR Article 18 and Article 9 of the European Convention,<sup>61</sup> which establish the right to manifest one's religion or belief "in worship, observance, practice and teaching" "either individually or *in community with others*" (emphasis added). OSCE commitments also include that states will "recognize, respect and furthermore agree to take the action necessary to ensure the freedom of the individual to profess and practice, alone or *in community with others*, religious or belief acting in accordance with the dictates of his own conscience"<sup>62</sup> (emphasis added). Further, OSCE commitments<sup>63</sup> and the European Convention<sup>64</sup> guarantee the right "to freedom of peaceful assembly and to freedom of association with others" and the OSCE commitments require states to "respect the right of (...) religious communities to establish and maintain freely accessible places of worship or assembly." (Vienna Concluding Document, par. 16(4)).

93. The decision whether or not to register with the state may itself be a religious one, and the right to freedom of religion or belief should not depend on whether a group has sought and acquired legal entity status.<sup>65</sup> The right to manifest religion "either individually or in community with others and in public or private," ICCPR Article 18(1) does not depend on a grant of entity status from the state. While a group that has not sought legal entity status cannot expect to have all the benefits of that status, a ban on all operation and activity without registration is extremely

---

<sup>61</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature by the Council of Europe on 4 November 1950, Entered into Force 3 September 1953 [hereinafter, "European Convention"].

<sup>62</sup> Concluding Document of Madrid – The Second Follow-up Meeting, Madrid, 6 Sept. 1983, "Questions relating to Security in Europe," par. 12.

<sup>63</sup> Charter of Paris for a New Europe/Supplementary Document to give effect to certain provisions contained in the Charter of Paris for a New Europe, Paris, 21 Nov.1990 ("We affirm that, without discrimination, every individual has the right to (...) freedom of association and peaceful assembly."); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 "[participating States reaffirm that] "(9.2) everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards; (9(3)) the right of association will be guaranteed.")

<sup>64</sup> Article 11.

<sup>65</sup> See Vienna Concluding Document, par. 16(4) (states "respect the right of (...) religious communities to (...) organize themselves according to their own hierarchical and institutional structure.").

disproportionate and is clearly an unnecessarily broad limitation of freedom of religion or belief. As stated in the OSCE Guidelines, “Registration of religious organizations should not be mandatory *per se*, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits.”<sup>66</sup> That is, legal systems may impose certain minimal requirements for groups that desire to obtain legal entity status, but states may not make acquisition of legal entity status a condition for individuals or groups engaging in religious activity. The OSCE Guidelines further provide: “Individuals and groups should be free to practice their religion without registration if they so desire.”<sup>67</sup>

94. These rights are not limited to citizens of the Kyrgyz Republic. Just as citizens have the right to worship individually or in community, so too do foreign citizens residing in the Kyrgyz Republic. Article 18 of the ICCPR states, “*Everyone* shall have the right to freedom of thought, conscience and religion” (emphasis added). For this reason, foreign Missions also should be able to operate without registration.

95. Article 9 also sets the number of citizens to establish a religious organization at 200. This number is problematic because of its discriminatory impact on smaller religious groups—particularly those that form on a congregational basis and may not have significant numbers of members. Numerosity requirements in OSCE countries with strong traditions of protecting religious freedom are usually smaller, such as 10 or 15. As the OSCE Guidelines state: “High minimum membership requirements should not be allowed with respect to obtaining legal personality.”

96. Article 9 also sets forth the procedure for establishing a central administrative body through a constitutive meeting of registered local religious organizations acting in at least 9 regions of the Kyrgyz Republic.

97. Firstly, this procedure is vague—must the constitutive meeting be comprised of already registered organizations? What is the exact procedural sequence? Secondly, this requirement imposes inappropriate constraints on the right of religious communities to freedom in structuring their own affairs, including their organizational structure. Allowing religious groups to choose their own structures is a core element of religious autonomy and religious freedom and is well protected under

---

<sup>66</sup> *Guidelines*, 17.

<sup>67</sup> *Id.*

OSCE commitments: states will “respect the right of (...) religious communities to (...) organize themselves according to their own hierarchical and institutional structure.”<sup>68</sup>

98. In addition, it is unclear why it is required that central administrative bodies have local religious organizations in at least 9 oblasts. This seems to irrationally and unnecessarily favor widespread religious organizations. Surely religious organizations with many local bodies in one oblast have just as much need of a unified central administrative body as one with local bodies in 9 oblasts.

99. Article 9 introduces the requirements for a religious association (“when there are at least ten religious communities of a common denomination, of which at least one has been operating in the Kyrgyz Republic for no less than fifteen years”). It is not clear, however, what a “religious association” is, what its functions are, what benefits accrue from forming one, and what distinguishes it from a “religious organization” or a “central administrative body.”

100. The requirement that associations have at least 10 “communities,” at least one of which has been operating in the Kyrgyz Republic for at least fifteen years is very vague. It is not clear what constitutes a “community” and why the association must have at least 10 communities. The term “common denomination” is also vague: are Sunni and Shiite Muslims a “common denomination”? Or Catholics, Protestants, and Orthodox Christians? Who decides? Moreover, the fifteen-year duration requirement is unduly restrictive and inconsistent with OSCE Guidelines, which provide “It is not appropriate to require lengthy existence in the State before registration is permitted.”<sup>69</sup>

101. Reasonable access to a legal entity status with suitable flexibility to accommodate the differing organizational forms of different communities is a core element of freedom to manifest one’s religion.<sup>70</sup> The UN Human Rights Committee, in interpreting Article 18 of the ICCPR, has stated that “Article 19 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee

---

<sup>68</sup> Vienna Concluding Document, par. 16.4.

<sup>69</sup> Guidelines, *supra* note 2, Section II(F).

<sup>70</sup> Metropolitan Church of Bessarabia v. Moldova (ECtHR, Dec. 13, 2001, App. No. 45701/99) (finding a violation of Article 9 in denying reasonable access to legal entity status); Vienna Concluding Document, par. 16.3 (states will “grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries.”).

therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.”<sup>71</sup>

102. If Article 9’s requirements for a “religious association” (at least 10 religious communities, at least one of which has been operating 15 years) apply to the formation of unions or creation of central administrative bodies, then these requirements are highly discriminatory, as indicated above. The OSCE Guidelines further state: “It is not appropriate to require lengthy existence in the State before registration is permitted.”

103. Article 9 defines a mission of a foreign religious organization as an organization “having administrative centers located beyond the Kyrgyz Republic or having foreign citizens in its administrative body.” This is very vague. If one of many members of the administrative bodies is a non-citizen, does the entire organization become foreign? What constitutes an “administrative body”? This provision needs to be clarified.

## **Chapter II, Article 11**

104. Article 11 requires one of statutory documents for registration of religious organizations to be “data on basics of the doctrine and its corresponding practice (...)” “Data” is a vague term. The provision should be more specific about what exactly is needed.

105. Article 11 also authorizes the state body on religious affairs to “request additional data” from religious organizations requesting registration. This is also vague. What kind of additional data can be required?

106. Article 11 refers to “theological expertise” which can be performed as part of the review of a request for registration. This “theological expertise” or “religious studies expertise” is undefined and is rife with possibility for abuse and discrimination. The Draft Law does not state what the purpose of the “theological expertise” is, nor specifies limitations on methods or objects of examination.

---

<sup>71</sup> United Nations Human Rights Committee General Comment No. 22 (48), adopted by the U.N. Human Rights Committee on 20 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994), par. 2.

Nowhere is the state barred from making theological judgments on the beliefs of a group. Indeed, the Draft Law does not appear to set forth standards for granting or denial of religious organization status, opening the way for the state body to examine the beliefs of a group and not just its actions, charter, or prior conduct elsewhere. The European Court of Human Rights' interpretation of Article 9 is helpful in understanding the content of freedom of religion in international norms: "The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate."<sup>72</sup>

107. Article 11 also states that "Evasion of religious organizations from the registration at the state body on religious affairs entails liability in conformity with legislation of the Kyrgyz Republic." As detailed above, penalizing organizations for operating without registering violates core religious freedom rights. The decision whether or not to register with the state may itself be a religious one, and the right to freedom of religion or belief should not depend on whether a group has sought and acquired legal entity status.<sup>73</sup> The right to manifest religion "either individually or in community with others and in public or private," ICCPR Article 18(1) does not depend on a grant of entity status from the state. While a group that has not sought legal entity status cannot expect to have all the benefits of that status, a ban on all operation and activity without registration is extremely disproportionate and is clearly an unnecessarily broad limitation of freedom of religion or belief. As stated in the OSCE Guidelines, "Registration of religious organizations should not be mandatory *per se*, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits."<sup>74</sup> That is, legal systems may impose certain minimal requirements for groups that desire to obtain legal entity status, but states may not make acquisition of legal entity status a condition for individuals or groups engaging in religious activity. The OSEC Guidelines further provide: "Individuals and groups should be free to practice their religion without registration if they so desire."<sup>75</sup>

---

<sup>72</sup> Manoussakis and Others v. Greece, 23 E.H.R.R. 387 (1997)(ECtHR, Sept. 26, 1996), para. 48.

<sup>73</sup> See Vienna Concluding Document, par. 16.4 (states "respect the right of (...) religious communities to (...) organize themselves according to their own hierarchical and institutional structure.").

<sup>74</sup> *Guidelines, supra note 2, Section II(F).*

<sup>75</sup> *Id.*

108. The Law (clause 11) should indicate the grounds which can lead to refusal of registration. It should also provide (similarly to what is provided for foreign missions and/or missionaries) that decisions refusing registration must be delivered in writing and set out in detail the grounds and justification for refusal. The law should further provide explicitly for the possibility to appeal in court against decisions refusing registration (and if necessary set out the procedure in detail). Provision for the indication of the grounds for refusal of registration and for the possibility to appeal against it in court is essential.

### **Chapter II, Article 12**

109. Article 12 institutes an annual registration procedure for foreign missions. This registration, according to subsection 12, does not grant foreign missions legal entity status. As indicated in the preceding sections, instituting a mandatory annual registration merely to operate is a disproportionate burden on the religious freedom rights of foreign citizens residing in the Kyrgyz Republic. It is also not clear why this registration must be done annually. This unnecessarily increases the burden on foreign groups.

110. Article 12 of the Draft Law very appropriately provides deadlines for review of applications for registration and for a notification in writing if registration is refused. Article 12 also provides that refusal of registration is reviewable in court.

111. Article 12(2) states that mission regulations “must provide that, in case of reorganization or liquidation of the mission, the property, which has [] architectural, cultural and historical value must stay in the Kyrgyz Republic.” The meaning of “[a]rchitectural, cultural, and historical value” is apparently clarified in a different law. However, since missions are not legal entities, it is not clear how they can hold property at all. Also, it is not clear that property must be that of the mission itself; does this cover personal property of missionaries as well? This subsection needs to be clarified.

112. Articles 12(5), 12(8) and 12(10) indicate that missions can be denied registration or have their activity suspended for several reasons. These bases are wider than those permitted under Article 18 of the ICCPR. Specifically “interethnic and ecumenical concord” is not a permissible basis on which to limit religious freedom. Indeed, the European Court of Human Rights has made clear that under

Article 9 of the European Convention, even though denominational differences may result in discord, what is at stake in such cases is “the preservation of pluralism and the proper functioning of democracy (...). Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.”<sup>76</sup>

113. In addition, the bases for denial of registration and suspension of activity are excessively vague: “if its activity has a threat to the state and social [public] security, the interethnic and ecumenical concord, health and morality of the population” (subsections 5 and 8). The bases for refusal of registration are similarly vague: posing “a threat to the state and social security, the interethnic and ecumenical concord, health and morality of the population or in other cases anticipated by legislation” (subsection 10). It is also not clear why these bases differ.

Article 12(10) states that the mission can be refused registration or re-registration if its aims and activity contradict “norms of the Constitution of the Kyrgyz Republic and other legal acts of the Kyrgyz Republic.” Does this only cover activity within the Kyrgyz Republic or activity performed abroad, where that activity may or may not be illegal?

## **Chapter II, Article 13**

114. Article 13(1) requires that “foreign citizens arriving to the Kyrgyz Republic in order to perform religious activities” be registered at the state body on religious affairs in order to perform “religious activities.” Given the broad and vague definition of “religious activities” in Article 3, this subsection constitutes a blatant violation of the religious freedom rights of foreign citizens. Foreign citizens residing in the Kyrgyz Republic retain their rights to religious freedom, which includes the core right to share one’s religious beliefs with others. Article 18 of the ICCPR states “*Everyone* shall have the right to freedom of thought, conscience and religion” (emphasis added). While a state has authority to regulate entry into its country, it should not violate the religious freedom rights of foreigners it has permitted to enter its country.

---

<sup>76</sup> Metropolitan Church of Bessarabia v. Moldova, ECtHR, App. No. 45701/99, 13 December 2001, para. 116, *citing* Serif v. Greece, ECtHR, App. No. 38178/97, 1999, para. 53.

115. Article 13(2) states that “missionary activity in the Kyrgyz Republic can be performed by the missionary, who represents the registered religious organization, has an invitation and the corresponding assignment.” It is not clear if this is proscriptive, *i.e.*, limiting missionary activity to those who “represent [a] registered religious organization, has an invitation and the corresponding assignment.” If so, this is a gross violation of religious freedom. Given the broad definition of missionary work (“activity directed to propagation of one’s religion among people of other beliefs,” Draft Law Chapter I, Article 3), one could violate this provision merely by answering a question about his beliefs or inviting someone of another to attend a worship service with him. Peaceable sharing of one’s beliefs is a critical element of the right to “manifest” one’s religious beliefs.<sup>77</sup> As the OSCE Guidelines indicate, “the limitation [on missionary work] can only be justified if it involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved.” Missionary activity is also protected under freedom of speech and the right to disseminate information,<sup>78</sup> and a limitation on the freedom to communicate one’s beliefs to those registered is disproportionately harsh and unjustified under international standards. Similarly to what is provided in respect of foreign missionaries (see clause 13.6), Clause 12 should provide that in case of refusal of registration, the applicant shall be informed in writing, including indications regarding justification of refusal.

116. Article 13(4) states that the governmental authority of ecclesiastical affairs may submit the constitute documents of the applicant to examination by a religious expert. It is not clear who constitutes an expert, and what the purpose of the examination is for. This “examination by a religious expert” is undefined and is rife with possibility for abuse and discrimination. The exact formula: “Religious studies expertise”. The Draft Law does not state what the purpose of the “examination” is, nor limitations on methods or objects of examination. Nowhere is the state barred from making theological judgments on the beliefs of a group. Indeed, the standards the

---

<sup>77</sup> ICCPR Article 18, European Convention Article 9.

<sup>78</sup> *Kokkinakis v. Greece*, 260-A Eur. Ct. H.R. (ser. A) (1993) (establishing that non-coercive bearing of religious witness is protected under freedom of religion); see also Article 20 of the Constitution of the Republic of Kazakhstan (“1. The freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited. 2. Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law(...)”); European Convention Article 10 (“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”)

Draft Law sets for denial of registration of a missionary are extremely vague, opening the way for the state body to examine the beliefs of a missionary and not just his or her actions or prior conduct elsewhere. The European Court of Human Rights' interpretation of Article 9 is helpful in understanding the content of freedom of religion in international norms: "The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate."<sup>79</sup>

117. Article 13(6) indicates that missionaries can be denied registration for several reasons. These bases are vague and are wider than those permitted under Article 18 of the ICCPR. Specifically "interethnic and ecumenical concord" is not a permissible basis on which to limit religious freedom. Indeed, the European Court of Human Rights has made clear that under Article 9 of the European Convention, even though denominational differences may result in discord, what is at stake in such cases "is the preservation of pluralism and the proper functioning of democracy (...). Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other."<sup>80</sup>

## **Chapter II, Article 14**

118. Article 14 outlines registration of religious educational institutions and, states that "Religious education in the territory of the Kyrgyz Republic without going through the procedure [of] registration in the defined procedure is forbidden." While the State may legitimately require registration or teacher certification for schools that are permitted to replace public education, receive state funds, or receive state-recognized diplomas, it is important to remember that religious education remains a core religious freedom right of religious institutions and parents. OSCE commitments state that States will "respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others; in this context respect, *inter alia*, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions; [and]

---

<sup>79</sup> Manoussakis and Others v. Greece, 23 E.H.R.R. 387 (1997)(ECtHR, Sept. 26, 1996), para. 48.

<sup>80</sup> Metropolitan Church of Bessarabia v. Moldova, ECtHR, App. No. 45701/99, 13 December 2001, para. 116, *citing* Serif v. Greece, ECtHR, App. No. 38178/97, 1999, para. 53.

allow the training of religious personnel in appropriate institutions.”<sup>81</sup> While it is proportionate to require registration of religious establishments in order to obtain specific government benefits, it is a disproportionate and significant violation of religious freedom to prohibit all non-registered religious education. In addition, prohibiting all religious education is overly broad – does this cover parents teaching their children their religious beliefs in their home?

## **Chapter II, Article 15**

119. Article 15 provides grounds for liquidation of a religious organization. Some of these appear to be disproportionate limitations on the religious freedom rights of individuals and religious organizations. For example, an organization or mission can be liquidated for fomenting “religious discord.” This, however, is not a permissible basis on which to limit religious freedom. Indeed, the European Court of Human Rights has made clear that under Article 9 of the European Convention, even though denominational differences may result in discord, what is at stake in such cases “is the preservation of pluralism and the proper functioning of democracy (...). Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.”<sup>82</sup>

120. Another ground for liquidation in Article 15 is “coercion to family fragmentation leading to family disruption.” This provision is vague and open to abuse. Courts have legitimate grounds to assess whether a religious organization intentionally seeks to coerce family disintegration. However, it is important to make sure this provision is drafted so as to avoid discrimination against less popular groups. Differing religious beliefs may simply reflect the differences between conflicting spouses or family members, rather than being the cause of them. Determining the causation of family break-ups is very difficult because of the subjective nature of the relationships. In fact, there are few religious groups that intentionally seek to coerce the splitting up of families. The reality is that different members of a family may be attracted by different religious teachings; the individual family members have the right to “have or adopt” a religion of their choice. ICCPR Article 18(3). The fact that some

---

<sup>81</sup> Vienna Concluding Document, para. 16.6, 16.7, 16.8. See also General Comment 22 § ; ECHR Protocol 2, Article 2, 1981 Declaration, Article 5; *Guidelines* page 13.

<sup>82</sup> *Metropolitan Church of Bessarabia v. Moldova*, ECtHR, App. No. 45701/99, 13 December 2001, para. 116, *citing* *Serif v. Greece*, ECtHR, App. No. 38178/97, 1999, para. 53.

tensions result is not grounds for banning particular religious organizations. Note that a provision of this nature is particularly likely to be invoked in a discriminatory way. Imagine a situation in which there is a family that belongs to one of the prevailing religions of a country, and one of the members decides to join a smaller, less well-known religious community. It may well be that the smaller religious community encourages family unity, but that the members of the family belonging to the prevailing group oust the family member who has converted to the smaller group. It is extremely unlikely that a situation of this kind will be used as evidence for banning or dissolving the prevailing religion, even though the coercion for family break-up is emanating from its adherents. On the contrary, it is all too likely to be taken as an excuse for taking action against the smaller group. These situations are inevitably complex, but the provision in question is vague and highly likely to be administered in discriminatory ways.

121. Article 15 also contains a number of other vague terms that are open the way for abuse and discrimination, such as “state safety,” fomentation of “persecution,” and “refusal to provide medical support to persons whose life or health are in danger.” The medical support issue may be aimed at groups that practice faith healing or refuse blood transfusions, but is worded in such a general and vague way that it would cover almost any medical situation where some medical assistance could conceivably be used. This article should be designed with greater specificity and with more attention to the individual’s religious rights, particularly those of adults. The OSCE Guidelines state: “Some religious and belief communities reject one or more aspects of medical procedures that are commonly performed. While many States allow adults to make decisions whether or not to accept certain types of procedures, States typically require that some medical procedures be performed on children despite parental wishes. To the extent that the State chooses to override parental preferences for what the State identifies as a compelling need, and that States legitimately may choose to do, the laws should nevertheless be drafted in ways that are respectful of those who have moral objections to medical procedures, even if the law does not grant the exemption that is sought.”<sup>83</sup>

122. In regard to supporting health, Article 15 appears to hold religious believers to a higher standard than non-believers—“coercion to suicide or refusal to

---

<sup>83</sup> *Guidelines*, p. 23.

provide medical support to persons whose life or health are in danger” seems to only an offense if it is “due to religious motives.” If these are also offenses for non-religious reasons, then there is no need to include them separately here. If not, then it is discriminatory to penalize only religious organizations for causing this behavior. This is a recurrent problem in the draft—for example, misrepresentation, fraud, and taking money by force are already likely criminal offenses. If so, then why is it necessary to list separately that organizations can be liquidated for “coercion of members and followers (...) to alienation of their property in favor of the religious organization.” The better practice is to rely on existing criminal offense as a basis to punish religious organizations or believers, as this retains the constitutional protections of the criminal process and avoids potential for administrative abuse and discrimination. Some have expressed worries that religious institutions may be prone to claim special exemptions from the law in this area. If this is in fact a recurrent problem of sufficient magnitude that it can’t be left to case by case assessment by courts, a response noting that religious institutions do not deserve greater protection in this particular area than other persons or groups that coerce monetary transfers would be narrower and should be sufficient. Note that in general, the right to freedom of religion or belief often calls for giving greater latitude to religious practices than might otherwise be provided. In general, protecting such greater latitude (i.e., freedom) is appropriate unless the limitations clauses apply.,

123. Article 15 also permits liquidation of religious organizations for “coercion of citizens to refusal to perform their obligations as defined by law.” Firstly, it is not clear why this is limited to citizens. Secondly, permitting some forms of conscientious objection is common in modern democracies. As the OSCE Guidelines state: “There are many circumstances where individuals and groups, as a matter of conscience, find it difficult or morally objectionable to comply with laws of general applicability (...). Most modern democracies accommodate such practices for popular majorities, and many are respectful towards minority beliefs.”<sup>84</sup>

### **Chapter III, Article 16**

124. Article 16 is helpful in outlining that religious organizations, missions, and religious educational institutions may own property necessary for provision of

---

<sup>84</sup> *Guidelines*, p.22.

their activities as well as accept and solicit donations. It is not clear why their ownership is limited to property necessary for provision of their own activities, however. Religious organizations should have the same opportunities to save and invest their funds as other organizations and this section is worded restrictively enough that it would appear to prevent the ownership of property as an investment. This is an unnecessary and disproportionate limitation on the freedom of religious organizations and the collective freedom of religion of individuals. Further, the wording is vague when it states that religious organizations have proprietary rights to property (...) donated (signed over) by citizens (...)” Are non-citizens permitted to donate property? It would be best to clarify that any individual may donate rights to property to religious organizations.

### **Chapter III, Article 19**

125. Article 19 states that “Charitable activities shall not facilitate dissemination of doctrine or religious beliefs.” This provision is an overly broad and disproportionate limitation on religious expression. It would apply to situations extending far beyond inappropriate coercive pressures associated with economic enticements. Many religious traditions provide charity to the disadvantaged. It would be very difficult if not impossible to determine whether the charity was used to “facilitate dissemination of doctrine or religious beliefs.” In any case, “facilitating dissemination of doctrine or religious beliefs” does not violate the fundamental rights and freedoms of others. To the contrary, the peaceable sharing of one’s beliefs is a critical element of the right to “manifest” one’s religious beliefs.<sup>85</sup> Missionary work and proselytism are also protected under freedom of speech and the right to disseminate information.<sup>86</sup> OSCE commitments include that states will “[m]ake it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries (...)”<sup>87</sup> and “allow individuals, institutions and organizations,

---

<sup>85</sup> ICCPR Article 18, European Convention Article 9.

<sup>86</sup> *Kokkinakis v. Greece*, 260-A ECtHR. (ser. A) (1993) (establishing that non-coercive bearing of religious witness is protected under freedom of religion); see also Article 20 of the Constitution of Kazakhstan (“1. The freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited. 2. Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law(...)”); European Convention Article 10 (“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”

<sup>87</sup> Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975.

while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information material of all kinds. To these ends they will remove any restrictions inconsistent with the abovementioned obligations and commitments.”<sup>88</sup> States also reaffirm that “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The restrictions on this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards.”

126. Perhaps this section is designed to address concerns about coercive proselytizing through provision of charitable services. Is important, however, that this provision be more clearly tied to specific forms of abuse. Determining whether charitable activity is secretly “facilitating” spreading doctrine is extremely subjective. In addition, this type of provision is counterproductive because it creates disincentives for religious communities to engage actively in charitable programs. That is, a religious community may engage in good faith charitable work with no intention of exploiting this work to proselytize. People in the community, however, may try to curry favor with the religious group by joining the group. Others might convert in good faith without any concern for obtaining charitable aid, but at a subsequent time fall on hard times, and benefit from normal charitable programs of the religious community. There are many diverse possible situations. The point is that if any group that engages in charitable aid and also has converts is at risk of a violation of this vague section, the result may be both a violation of expression rights (the right to share beliefs) and the creation of a disincentive to engage in genuine charitable work. Limiting charitable activity as contemplated by the Proposed Draft Law exceeds permissible limitations allowed by international law.<sup>89</sup>

#### **Chapter IV, Article 22**

127. Article 22(1) states that “Worship services, religious exercises, rituals, and ceremonies can be performed without hindrance in ceremonial buildings, constructions, and in related territories, in pilgrimage locations, and on cemeteries.” This section is vague—does it prevent religious exercises at other locations? Does

---

<sup>88</sup> Vienna Concluding Document, par. 34.

<sup>89</sup> See ICCPR Article 18(3).

that bar meetings or prayers in other locations? Article 23 (3) permits “worship services, religious exercises, rituals, and ceremonies, as well as other public events” to be “carried out in places that were not designed specifically for these purposes” to be performed “in the procedure stipulated by the legislation of the Kyrgyz Republic.” Taken together, the impression appears to be that religious exercise can be limited or barred by the state when performed in places not designed specifically for these purposes. This sets up the situation where disproportionate and unnecessary limitations could easily be placed on religious actions in homes, buildings converted to religious use, or buildings temporarily used for a religious service. The list of special settings in which “religious exercises, rituals and ceremonies” should be allowed on request should be expanded to include military settings. See comments on Article 8 above.

128. Such limitations on the international right to manifest ones’ religious or belief “in worship, observance, practice and teaching” “either individually or in community with others and *in public or private*”<sup>90</sup> (emphasis added) and the OSCE commitment to allow believers to “establish and maintain freely accessible places of worship and assembly”<sup>91</sup> would be disproportionate and unnecessary in a democratic society. While certainly the rights of others living near a believer should be respected, ordinary criminal, administrative and land use laws already deal with such issues. The ability for religious individuals to meet with others in their own homes is a core element of freedom of religion and association.<sup>92</sup>

129. Article 22(4) states that “religious organizations are not entitled to carry out collection of obligatory donations and any impositions in respect to adherents.” While soliciting funds through fraud or coercion is clearly not protected by international instruments, these actions are presumably already punishable by criminal law. This provision is not clear, however, in limiting its scope to fraud or coercion. Some religions impose mandatory financial obligations on their members as

---

<sup>90</sup> ICCPR Article 18, European Convention, Article 9.

<sup>91</sup> Vienna Concluding Document par. 16(4).

<sup>92</sup> See, e.g., Charter of Paris for a New Europe/Supplementary Document to give effect to certain provisions contained in the Charter of Paris for a New Europe, Paris, 21 Nov.1990 (“We affirm that, without discrimination, every individual has the right to (...) freedom of association and peaceful assembly.”); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 “[participating States reaffirm that] “(9.2) everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards; (9.3) the right of association will be guaranteed.”)

a matter of doctrine, and exclude non-paying members from some religious benefits or membership. Punishing these sort of religious beliefs is not “necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others” and thus does not meet the standard of the ICCPR on limitations of religious freedom.<sup>93</sup> This provision should be clarified to only cover coercive or fraudulent solicitations.

130. Article 22(5) permits circumcision for Muslims and baptism and weddings that have been civilly registered in churches for Christians. This appears to unnecessarily and disproportionately discriminate among religions. Weddings in other traditions and circumcision by Jews appear not to be protected or permitted under the law. These rituals can be core elements of a religious tradition and are clearly a manifestation of religion protected by international instruments. Limitations on manifestations of religious freedom must be “necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.”<sup>94</sup> It is not clear why preventing circumcision by Jews or marriages by Hindus, to give only a few examples, is necessary in a democratic society and meets the grounds for limitations listed above.

131. OSCE commitments also reject this type of unnecessary and disproportionate discrimination. Member states are committed to “take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social, and cultural life” and to “foster a climate of mutual tolerance and respect between believers of different communities.”<sup>95</sup>

132. Such discrimination also appears to violate the Constitution of the Kyrgyz Republic. Article 13.3 states “All people in the Kyrgyz Republic are equal before the law and the courts. No one may be subjected to any sort of discrimination or abridgment of rights and freedoms because of origin, gender, race, ethnicity, language, faith, political or religious beliefs, or any other conditions or circumstances of a personal or social character.”

---

<sup>93</sup> ICCPR Article 18; European Convention, Article 9.

<sup>94</sup> ICCPR Article 18; European Convention Article 9.

<sup>95</sup> Vienna Concluding Document, par. 16(1), 16(2).

## Chapter IV, Article 23

133. Article 23 requires an “examination” by a state religious expert of “religious” literature and materials for importation, distribution, or placement in a library. First, these terms are vague, leaving them open for abuse. What is entailed by an “examination”? What criteria are used? Does the examination ban material advocating immediate violent action or action against the constitutional regime or is the examiner permitted to prevent importation, distribution, or placement of any material that he or she personally disagrees with? What material is “religious”? Who decides?

134. This institution of censorship of religious materials and the related limitations on the distribution of religious materials are severe limitations on freedom of expression and religion and are unnecessary in a democratic society. They violate OSCE commitments to freedom of religion (“states will (...) allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials”)<sup>96</sup> and speech,<sup>97</sup> Article 10 of the European Convention (“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”), as well as very likely Article 16.2 of the Constitution of the Kyrgyz Republic, which provides for the right to freely disseminate information.<sup>98</sup>

---

<sup>96</sup> Vienna Concluding Document, par. 16(10).

<sup>97</sup> Vienna Concluding Document, par. 34 (“[states] will ensure that individuals can freely choose their sources of information. In this context they will (...) allow individuals, institutions and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information material of all kinds. To these ends they will remove any restrictions inconsistent with the abovementioned obligations and commitments.”); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, par. 9.1 ([the states reaffirm that] “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright.”); Concluding Document of Budapest, 6 Dec. 1994 para. 36 (“The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society.”); Istanbul Document, Istanbul, 19 November 1999, Charter for European Security: III Our Common Response, par. 26 (“We reaffirm the importance of (...) the free flow of information as well as the public’s access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for (...) unimpeded transborder and intra-State flow of information (...).”).

<sup>98</sup> Constitution, Kyrgyz Republic, Article 16(2) (“Every person in the Kyrgyz Republic has the right: (...) to the free expression and dissemination of thoughts, ideas, and opinions, to freedom of literary,

135. Article 23(3) states that “commercial organizations publishing religious literature and manufacturing ceremonial objects can be established only by religious organizations.” This appears to prevent “normal” secular enterprises and publishing houses from publishing religious literature. This limitation on the right to manifest religion and on the freedom of speech and dissemination of ideas is neither necessary in a democratic society nor proportionate. In some religious traditions, there are particular ceremonial objects that need to be able to be produced under the auspices of the religious organizations of their enterprises, in accordance with religious requirements. If there is a risk that unauthorized counterfeit objects may be produced, the state may have an appropriate interest in preventing such inappropriate conduct. In general, however, religious groups should be able to authenticate whether such items have been produced in the religiously correct way, and they should have the right to refuse to use objects not produced in accordance with their religious beliefs.

136. Article 23(4) limits distribution of religious materials to “beneficially owned properties, as well as places allocated for these purposes in the standard procedure by local governmental institutions” and forbids distribution of religious materials in public places and “visits to private apartments, children’s institutions, schools and higher education facilities.” This is a serious infringement on the right to manifest religious belief and the right to freely disseminate information and is unnecessary in a democratic society. They violate OSCE commitments to freedom of religion (“states will (...) allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials”) <sup>99</sup> and speech,<sup>100</sup> Article 10 of the European Convention (“Everyone has the right to freedom

---

artistic, scientific, and technical creation, and to freedom of the press and transfer and dissemination of information.”).

<sup>99</sup> Vienna Concluding Document, par. 16(10).

<sup>100</sup> Vienna Concluding Document, par. 34 (“[states] will ensure that individuals can freely choose their sources of information. In this context they will (...) allow individuals, institutions and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information material of all kinds. To these ends they will remove any restrictions inconsistent with the abovementioned obligations and commitments.” ); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, par. 9.1 ([the states reaffirm that] “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright.”); Concluding Document of Budapest , 6 Dec. 1994 para. 36 (“The participating

of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”), as well as very likely Article 16(2) of the Constitution of the Kyrgyz Republic, which ban censorship and provide for the right to freely disseminate information.<sup>101</sup>

137. The limit on “visits” to private apartments and other institutions is particularly problematic. It is vague—are all “religious” visits forbidden, or only those for the purpose of literature distribution? What constitutes a “visit”? A friend sharing religious material? A religious clergyman making an official visit? Taken even at its most narrow possible interpretation, this provision is still too far reaching and is a gross violation of religious freedom, especially as concerns “visits” to private apartments. This is not in line with best practices in the OSCE region. Essentially, this would ban private discussions of religion where religious material is shared. This is a core element of religious freedom, and is protected by OSCE commitments to freedom of religion (“states will (...) allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials”)<sup>102</sup> and speech,<sup>103</sup> Article 10 of the European Convention (“Everyone has

---

States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society.”); Istanbul Document, Istanbul, 19 November 1999, Charter for European Security: III Our Common Response, par. 26 (“We reaffirm the importance of (...) the free flow of information as well as the public’s access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for (...) unimpeded transborder and intra-State flow of information (...”).

<sup>101</sup> Constitution, Kyrgyz Republic, Article 16.2 (“Every person in the Kyrgyz Republic has the right: (...) to the free expression and dissemination of thoughts, ideas, and opinions, to freedom of literary, artistic, scientific, and technical creation, and to freedom of the press and transfer and dissemination of information.”).

<sup>102</sup> Vienna Concluding Document, par. 16.10.

<sup>103</sup> Vienna Concluding Document, par. 34 (“[states] will ensure that individuals can freely choose their sources of information. In this context they will (...) allow individuals, institutions and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information material of all kinds. To these ends they will remove any restrictions inconsistent with the abovementioned obligations and commitments.” ); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, par. 9.1 ([the states reaffirm that] “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright.”); Concluding Document of Budapest , 6 Dec. 1994 para. 36 (“The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society.”); Istanbul Document, Istanbul, 19 November 1999, Charter for European Security: III Our Common Response, par. 26 (“We reaffirm the importance of (...) the free flow of information

the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”), as well as very likely Article 16(2) of the Constitution of the Kyrgyz Republic, which ban censorship and provide for the right to freely disseminate information.<sup>104</sup>

138. Article 23(5) states that “citizens and religious organizations are entitled to purchase and use religious literature in the language of [their] own choice, as well as other objects and materials of religious orientation, only in worship service places and in specialized shops.” Taken literally, this Article of the Draft Law would forbid use of religious literature or objects in homes or in public places, and does not appear to give any rights to non-citizens. This is an overreaching and disproportionate limitation on core manifestation of religious freedom and speech. OSCE commitments require states to “respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief.”<sup>105</sup> Restricting purchase and use to places of worship service and specialized shops is a disproportionate limitation, which is unnecessary in a democratic society to “protect public safety, order, health or morals or the fundamental rights and freedoms of others.”<sup>106</sup>

139. Subsection 5 of Article 23 also states that “production, storage, and distribution of printed materials, film[], photographic, audio, video production, and other materials containing ideas of religious extremism, separatism, and fundamentalism entail liability in accordance with the legislation of the Kyrgyz Republic.” Terms such as “extremism, separatism, and fundamentalism” are vague and open for abuse. Perhaps these terms are defined in the other legislation referred to, but, as the OSCE Guidelines state: “While State laws pertaining to national security and religious terrorism may well be appropriate, it is important that such laws not be used to target religious organizations that do not engage in objectively criminal

---

as well as the public’s access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for (...) unimpeded transborder and intra-State flow of information (...).”

<sup>104</sup> Constitution, Kyrgyz Republic, Article 16.2 (“Every person in the Kyrgyz Republic has the right: (...) to the free expression and dissemination of thoughts, ideas, and opinions, to freedom of literary, artistic, scientific, and technical creation, and to freedom of the press and transfer and dissemination of information.”).

<sup>105</sup> Vienna Concluding Document, par. 16.9.

<sup>106</sup> ICCPR Article 18, European Convention Article 9.

or violent acts. Laws against terrorism should not be used as a pretext to limit legitimate religious activity.”<sup>107</sup>

#### **Chapter IV, Article 24**

140. Article 24 implements the OSCE commitment to “allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, *inter alia* through travel, pilgrimages and participation in assemblies and other religious events.”<sup>108</sup> This is helpful, but one phrase is not entirely clear. Article 24(2) provides that “In concurrence with the governmental authority of ecclesiastical affairs, organizations, missions are entitled to invite foreign citizens for performing professional, including preaching, religious activities in these organizations in accordance with the legislation of the Kyrgyz Republic.” What would such “concurrence with governmental authority” entail? What conditions are set for inviting foreign citizens? Are these based on the religious beliefs of the invitees? The OSCE Guidelines state: “If individuals from particular religious belief backgrounds fall within neutral criteria (such as by constituting security risks or likely criminal behaviour), they legitimately may be excluded. However, if a State creates purely religion-based categories for exclusion, this may be inconsistent with the required religious neutrality of the State. Moreover, since such restrictions may make it difficult for a particular belief community to staff its organization as it sees appropriate, such restrictions may in fact operate as an intervention in internal religious affairs. This, visa rules that specifically aim at religious exclusion, particularly discriminatory exclusion, should be carefully scrutinized.”<sup>109</sup>

#### **Chapter V, Article 28**

141. Article 28 helpfully provides a requirement of a written warning and an opportunity to cure activity before the government may apply for liquidation. Such a procedure serves as a useful protection for religious freedom of religious groups by preventing liquidation based on an unintentional mistake. The provision in the second paragraph of Article 28 authorizing the governmental authority of religious affairs to suspend operations of a religious organization pending award of a judgment of

---

<sup>107</sup> *Guidelines*, pp. 24-25.

<sup>108</sup> Vienna Concluding Document, par. 32.

<sup>109</sup> *Guidelines*, p. 19.

liquidation constitutes an inappropriate intervention in religious affairs. When a remedy as drastic as liquidation is being sought, the religious organization should be able to continue operating until an appropriate court decision is handed down, and in general, until all appeals are exhausted. If there are extraordinary circumstances posing an imminent threat to public health, safety, order, morals, or the fundamental rights of third parties, one would expect that an expedited judicial decision should be available. Suspending the operation of a religious organization without recourse to judicial review leaves excessive discretion in the hands of the governmental authority.

### **Chapter V, Article 29**

142. Article 29 lists limitations on religious organizations whose operation have been suspended pending a court decision on liquidation. While limiting the activities of suspended religious organizations which flow from legal entity status is perfectly reasonable, the limitation on performing religious activities is unnecessary in a democratic society. As indicated previously, a group's right to perform religious activities should not be tied to whether or not it has legal entity status. The right to manifest religion "either individually or in community with others and in public or private," ICCPR Article 18(1) does not depend on a grant of entity status from the state. While a group that has not sought (or has lost) legal entity status cannot expect to have all the benefits of that status, a ban on all operation and activity without registration or legal entity status is extremely disproportionate and is clearly an unnecessarily broad limitation of freedom of religion or belief. As stated in the OSCE Guidelines, "Registration of religious organizations should not be mandatory *per se*, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits."<sup>110</sup> That is, legal systems may impose certain minimal requirements for groups that desire to obtain legal entity status, but states may not make acquisition of legal entity status a condition for individuals or groups engaging in religious activity. The OSCE Guidelines further provide: "Individuals and groups should be free to practise their religion without registration if they so desire."<sup>111</sup>

### **Chapter V, Article 31**

---

<sup>110</sup> *Guidelines*, 17.

<sup>111</sup> *Id.*

143. It is entirely appropriate that international agreements protecting freedom of religion and religious organizations should prevail over those stated in national law, but it is not entirely clear how this provision is related to Article 2, which uses somewhat different language.